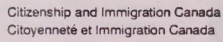


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U.S.A.	Oregon-Portland	McAninch, Malcolm Lewis	9450 S.W. Barnes Road, Suite 210	97225	
U.S.A.	Penn.-Philadelphia	Sfiedu, E.P.	716 N. 24th Street	19130	(215) 235-3000
U.S.A.	Penn.-Philadelphia	Frankel, M.C.	135 S. 19th St. #1010	19103	(215) 564-6500
U.S.A.	South Dakota-Rapid City	Watman, Steve	902 Columbus Street	57701	
U.S.A.	Tennessee-Memphis	Carter, Charles L.	The Medical Group, 1734 Madison	38104	(901) 726-0200
U.S.A.	Texas-Dallas	Fried, Gabriel	(alt. to Dr. McNally) Family Med. Centre, 15111 Preston	75248	(214) 387-0155
U.S.A.	Texas-Dallas	McNally, Lawrence	Family Med.Ctr., 15111 Preston, N.W. Corner Beltline	75248	(214) 387-0155
U.S.A.	Texas-Fort Worth	McDougall, Peter	Harris Methodist Hospital S.W., Ste. 100, 6100 Harris Parkway	76132	(817) 346-5111
U.S.A.	Texas-Houston	Hanser, Donald S.	427 West 20th St., Suite 406	77008	(713) 864-8400
U.S.A.	Utah-Salt Lake City	Naylor, Alan	Foothill Family Clinic, 2295 Foothill Dr.	84109	(801) 486-3021
U.S.A.	Utah-Salt Lake City	Whitis, Lori	Foothill Family Clinic, 2295 Foothill Dr.	84109	(801) 486-3021
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U.S.A.	Washington-Bothell	Dergalust, Robert	17511 68th Ave. N.E.	98011	(206) 485-0505
U.S.A.	Washington-Bothell	Ting Ho, Mary	Kenmore General Medical Clinic, 17511-68th Ave. N.E.	98011	(206) 485-0505
U.S.A.	Washington-Renton	Dergalust, Robert	2838 N.E. Sunset Blvd.	98056	(206) 255-0056
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U.S.A.	Washington-Seattle	Ferguson, James L.	CHEC Medical Centre, 1151 Denny Way	98109	(206) 682-7418
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Uganda	Kampala	Kasasa, M.B.	P.O. Box 1896		259039
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Ukraine	Kiev	Zatserkovnyi, V.P.	(alt. Dr. A. Mogilnyi, Dr. M. Polyakova) Kiev Polyclinic No. 22, 37 Bohdan Khmelniiski St.	252030	044-224-5314
Ukraine	Lviv	Matviychuk, Bohdan	Lviv Medical Institute, 79 Promyslova Street	290059	(0322) 59-74-45
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Venezuela	Puerto la Cruz	Estaba, Pedro J. Mata	Avendida 5 de Julio, Edificio Oriente, Planta Baja		01-58-81-23674
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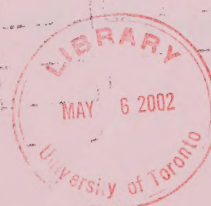
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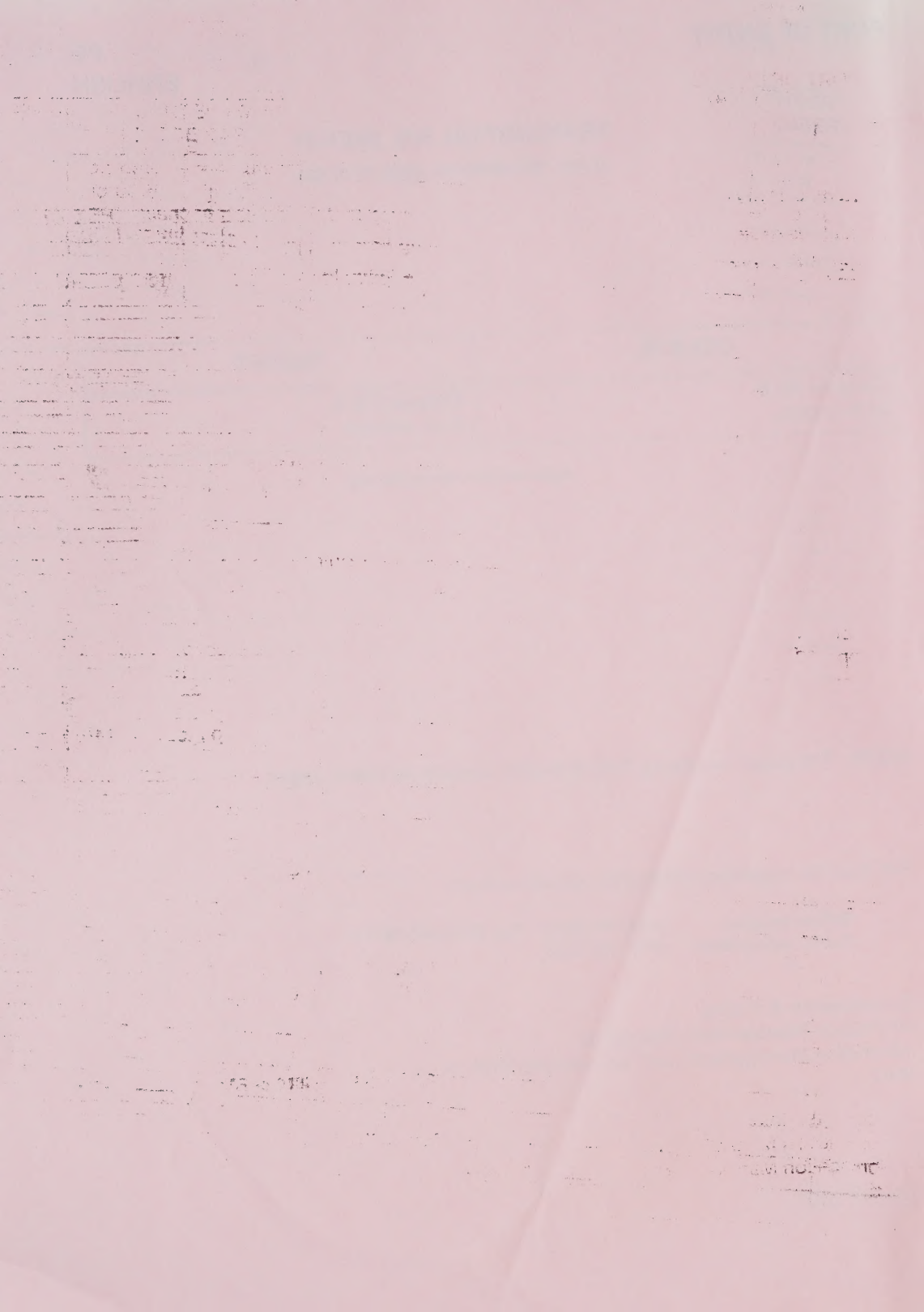
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*Appendix H of chapter PE 1, Appendix G of chapter PE 5 and Appendix E of chapter PE 6 are now part of chapter 1 of the IR (Immigration Reference) manual, p. 11, under the table titled: "Countries designated for the purposes of the Visiting Forces Act".

**Appendix E of chapter PE 4 is now part of chapter 2 of the IR manual, p. 21, under the table titled: "Regional Business Immigration Coordinators".

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Chapter PE 1

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- Chapter PE 3**
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- Chapter PE 4**
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Agreement (NAFTA)**



Citizenship and
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Citoyenneté et
Immigration Canada

Primary and Secondary Examinations

Abbreviations and Short Forms	
Act	<i>Immigration Act</i> , as amended
CIC	Canada Immigration Centre
Customs	Revenue Canada, Customs, Excise and Taxation
FOSS	Field Operations Support System
IAD	Immigration Appeal Division of the Immigration and Refugee Board
IO	Immigration Officer
<i>MLACM Act</i>	<i>Mutual Legal Assistance in Criminal Matters Act</i>
PIL	Primary Inspection Line
POE	Port of Entry
Reciprocal Arrangement	Reciprocal Arrangement between the Canada Employment and Immigration Commission and the United States Immigration and Naturalization Service, Department of Justice for the Exchange of Deportees between the United States of America and Canada
SIO	Senior Immigration Officer
USINS	United States Immigration and Naturalization Service

IMMIGRATION

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Chapter PE 1

**Primary and Secondary
Examinations**





Citizenship and
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Primary and Secondary Examinations

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SIO	Senior Immigration Officer
USINS	United States Immigration and Naturalization Service

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how an immigration officer at a port of entry conducts primary and secondary examinations of persons seeking to come into Canada.

1.2 Policy intent

Canadian immigration policy aims for conducting primary and secondary examinations are:

- to facilitate the entry of visitors into Canada for the purpose of fostering trade and commerce, tourism, cultural and scientific activities and international understanding
- to ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate in a manner inconsistent with the *Canadian Charter of Rights and Freedoms*
- to foster the development of a strong and viable economy and the prosperity of all regions in Canada
- to maintain and protect the health, safety and good order of Canadian society, and
- to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity [A3].

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, section 3.

2. THE EXAMINATION PROCESS

2.1 What is an examination?

All persons seeking to come into Canada are subject to an examination. An examination is any procedure by which an immigration officer (IO) determines whether a person seeking to come into Canada may be allowed to come into Canada or may be granted admission [A2(1)]. An examination usually takes place at a port of entry (POE). A POE is any place designated as a POE by the Minister for the examination of persons [Instrument I-19].

The examination process may include a primary and a secondary examination. The primary inspection is normally conducted by Revenue Canada, Customs, Excise and Taxation (Customs) officers, who are designated as IOs under Instrument I-13 when they are employed at a designated POE. A secondary immigration examination is usually conducted by an IO following a referral from the Primary Inspection Line (PIL) [A12(3)].

An examination begins when a person arrives at a POE and informs you or a Customs officer that he or she is seeking to come into Canada. Under current procedures the first point of contact for a person arriving at a POE is the Customs officer. The examination ends when:

- you or the Customs officer allows the person to come into Canada or admits the person to Canada
- you refuse the person permission to come into Canada, or
- you or the Customs officer allows the person to withdraw.

You should be aware that the initial examination at the PIL concludes when a Customs officer refers the person to an immigration secondary examination.

2.2 Roles of the primary and secondary examining officers

A primary examination is normally conducted by a Customs officer who is formally designated as an IO. A secondary examination is usually conducted by an IO at a POE after an IO-designated Customs officer on the PIL refers a person to the IO for secondary examination [A12(3)]. This chapter refers to both primary and secondary examining officers as IOs.

As an IO at a POE, your functions are:

- to facilitate the movement of those persons who have a right to come into Canada [A14(1)(a)]
- to facilitate the movement of those persons who shall be allowed to come into Canada [A14], and
- to ensure that those persons who are inadmissible to Canada are prevented from coming into the country [A19].

You normally conduct an examination in person at a place designated as a POE by the Minister under Instrument I-19, or at such other place as may be designated by a senior immigration officer (SIO) under A12(1).

You have a responsibility and an obligation to ensure that you deal with each person you are examining in a courteous and efficient manner. You should examine all the facts before making a decision and, where appropriate, explain the reasons for that decision to the traveller.

You should remember that most individuals seeking admission to Canada do not pose a risk, and you should allow them forward without delay. The duty of all examining officers is to ensure that those who seek to contravene our laws are prevented from entering Canada and that those who readily comply with our laws are allowed forward.

2.3 Persons to be examined

Subject to the *Immigration Regulations*, all persons who seek to come into Canada, including Canadian citizens, must first present themselves to an IO for an examination at a POE, or at any other place that an SIO may designate [A12(1)]. This examination is aimed at determining who shall be allowed to come into Canada or may be granted admission.

Section 12(1.1) of the Act provides that:

“For the purposes of this Act, a person who, without leaving Canada, leaves an area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada may be interviewed by an immigration officer to determine whether the person is seeking to come into Canada.”

This section provides the legal authority for you to interview individuals seeking to leave a departure lounge, to determine if they are persons who should be examined.

Any person who has left Canada but was not granted lawful permission to be in any other country, and subsequently is returned to Canada by force of circumstances, is deemed under A12(2) to be seeking to come into Canada, unless the person is in a prescribed class. Therefore the person must present himself or herself for examination as required by A12(1). No classes of persons have yet been prescribed for the purposes of A12(2).

2.4 General presumptions

You should be aware of two general presumptions established by the Act. These general presumptions form the basis of the interviews that both you and Customs officers conduct:

- “Where a person seeks to come into Canada, the burden of proving that person has a right to come into Canada or that his admission would not be contrary to this Act or the regulations rests on that person” [A8(1)], and
- “Every person seeking to come into Canada shall be presumed to be an immigrant until that person satisfies the immigration officer examining him or the adjudicator presiding at his inquiry that he is not an immigrant” [A8(2)].

The *burden of proof* noted in A8(1) is the obligation to meet the requirement that a fact in issue be proved or disproved.

The presumption established by A8(2) is essential for the proper examination of persons at POEs. For example, it provides you with the authority to deny admission under A19(1)(h) to a person who gives evasive or inconclusive answers, which create doubt in your mind that the person will depart from Canada on completion of his or her stay.

You should bear in mind that the travelling public rarely expresses their intent in the same way as the legislation is written.

2.5 The duty to answer questions

All persons seeking to come into Canada must provide whatever information is required by the examining officer to determine whether or not they shall or may be allowed to come into Canada [A12(4)]. This information may take the form of a verbal declaration, or written documentation such as a passport or birth certificate.

It is an offence knowingly to make any false or misleading statement at an examination [A94(h)]. A charge under A94(h) may proceed by indictment or summary conviction [A94(2)].

2.6 Categories of persons coming into Canada

Although all persons who seek to come into Canada must report for examination, various categories of persons come into Canada by right or are admitted to or allowed to come into Canada by law.

2.6.1 Persons allowed into Canada by right

The following categories of persons may come into Canada by right:

- a) **Canadian citizens and permanent residents:** “a Canadian citizen and, subject to section 10.3, a permanent resident have a right to come into Canada, except where in the case of a permanent resident, it is established that the person is a person described in subsection 27(1)” [A4(1)].
- b) **Indians:** “a person who is registered as an Indian pursuant to the Indian Act has, whether or not that person is a Canadian citizen, the same rights and obligations under this Act as a Canadian citizen” [A4(3)].

2.6.2 Persons allowed into Canada by law or privilege

The following categories of persons may come into Canada by law or privilege:

- a) **permit holders:** if an IO is satisfied that a person whom the officer has examined is in possession of a subsisting permit, the IO shall allow that person to come into Canada [A14(1)(b)]. The permit must be valid for re-entry to Canada, in accordance with A37(4.1).
- b) **persons removed but not granted lawful permission to be in any other country:** if an IO is satisfied that a person whom the officer has examined is a person against whom a removal order has been made who has been removed from or otherwise left Canada but has not been granted lawful permission to be in any other country, the IO shall allow that person to come into Canada [A14(1)(c)].
- c) **persons returning to Canada in accordance with a transfer order made under the *Mutual Legal Assistance in Criminal Matters Act*:** if an IO is satisfied that a person whom the officer has examined is a person returning to Canada in accordance with a transfer order made under the *Mutual Legal Assistance in Criminal Matters Act* who, immediately before being transferred to a foreign state under the transfer order, was subject to an unexecuted removal order, the IO shall allow that person to come into Canada (see section 7.7 below) [A14(1)(d)].
- d) **immigrants:** “where an immigration officer is satisfied that it would not be contrary to this Act or the regulations to grant landing to an immigrant whom the officer has examined, the officer shall (a) grant

landing to that immigrant; or (b) authorize that immigrant to come into Canada on condition that the immigrant be present for further examination by an immigration officer within such time and at such place as the immigration officer who examined the immigrant may direct" [A14(2)].

- e) **visitors:** visitors are admitted by privilege. "Where an immigration officer is satisfied that it would not be contrary to this Act or the regulations to grant entry to a visitor whom the officer has examined, the officer may grant entry to that visitor and impose terms and conditions of a prescribed nature" [A14(3)]. For a list of the terms and conditions that may be imposed, see s. 23 of the *Immigration Regulations*.

3. PRIMARY EXAMINATIONS

The first step in the examination process is the arrival of a person at the POE. A POE may be a land border, an airport, a marine harbour or any other place designated by the Minister.

Customs officers have been delegated the authority since 1962 to undertake the initial immigration examination of persons seeking admission to Canada. Customs officers administer legislation and programs by providing a wide range of inspection, examination and enforcement activities on behalf of many government departments and agencies, including Revenue Canada, Customs, Excise and Taxation; Canada Immigration; Department of Health; and Department of Agriculture and Agri-Food.

The administrative and operational responsibilities for the examination of persons seeking admission into Canada are outlined in a Memorandum of Understanding between the Department of National Revenue, Customs and Excise and the Canada Employment and Immigration Commission, signed in October, 1983 (see APPENDIX A).

3.1 Liaison with Customs

The Memorandum of Understanding spells out the commitment by both departments to develop regular communications at all levels, to ensure the efficient and effective administration of our operations. This is particularly important at the examining officer level. A Customs officer designated as an IO is the first point of contact for persons arriving in Canada.

Customs officers designated as IOs are encouraged in their training to ask about the results of referrals, and immigration officials are encouraged to provide feedback. Liaison is a key element in maintaining an effective working relationship with PIL officers performing the primary portion of the examination process.

You should understand that a person's story may change between the PIL and the immigration secondary examination. As the examining officer you may not be aware of what the person said to the officer on the PIL.

Remember that you are not operating under the same time constraints as is the PIL officer, and you can, therefore, have more time to examine the person effectively.

3.2 Responsibilities of primary examining officers

As an IO conducting a primary examination, Customs officers are responsible for:

- questioning persons and reviewing documentation to determine admissibility
- determining whether persons seeking admission to Canada are or are not immigrants
- admitting persons into Canada if no further examination or documentation is required, stamping passports when required and notating the length of stay when required, and
- referring persons for a more detailed immigration examination when appropriate, in accordance with the immigration secondary referral list (see APPENDIX B).

4. DECISION CRITERIA FOR PRIMARY EXAMINATIONS

4.1 Primary examination questions

As an IO at a POE, you should be aware of the duties of a Customs officer (designated as an IO) at a primary examination.

Primary examination questions are designed to elicit as much information as possible quickly and effectively, by the officer's focusing on those questions that apply to the person being examined. Under most circumstances the Customs officer need not ask all questions of all travellers.

Normally the examining officer begins by asking one or more of six questions:

- **What is your citizenship?**

By asking this question first, the Customs officer can identify all those individuals who may come into Canada by right. This eliminates a vast majority of travellers from an immigration secondary examination. If the person does not have a right to come into Canada, this question allows the Customs officer to identify those persons who may require a passport or a visa to enter Canada. If the person has a machine-readable passport, the Customs officer does not necessarily have to ask about citizenship. A passport reader, however, is no substitute for a good verbal examination.

- **Where do you reside?**

By determining residency, the Customs officer can eliminate from an immigration secondary examination all those travellers who are permanent residents of Canada and who come into Canada by right. A Customs officer must refer for secondary examination all permanent residents who have been away from Canada for more than 183 days in any 12-month period. This question helps the Customs officer to determine passport and visa requirements if the person is a visitor. If the person is a returning resident, the Customs officer may ask the supplemental question: *How long have you been away?* This will determine the person's possible loss of status and referral for secondary examination.

- **What is the purpose of your trip to Canada?**

Once the Customs officer determines that the person may not come into Canada by right, he or she must establish why the person is coming to Canada. By asking this question the Customs officer can determine the purpose, and identify the need for a referral to immigration secondary for control purposes (for example, for landing, a student authorization, and so forth). The Customs officer may omit this question if he or she is working at a small border crossing and is familiar with the traveller, regular traffic or commuters.

- **Do you intend to take or seek employment while in Canada?**

If the Customs officer has not yet determined that the person is coming to Canada to work, this question ensures that employment opportunities for Canadians are protected and that the person will comply with relevant employment regulations.

- **How long do you intend to stay in Canada?**

The Customs officer should ask this question only when the person seeking entry has not revealed the length of stay. Once the Customs officer has determined the length of the requested stay, he or she must either stamp the person's passport (if the person is entering for up to six months), or refer the person to Immigration secondary examination if the person has requested more than six months. A Customs officer is instructed to refer the person to an immigration secondary examination if the officer has reason to doubt the person and believes that a detailed examination may be in order: for example, if the person is seeking entry for an extended period of time, but the person's passport is expiring soon, or an airline ticket shows a return flight scheduled in a few days.

- **What is your name?**

If the Customs officer has any reason to doubt the person's identity, he or she should ask for the person's name. The Customs officer should examine the person's documents to determine if the name the person has given is the same as the name in the document, or in the case of an aircraft passenger, to determine if the name is the same as the one on Customs form E 311 (see APPENDIX C).

The Customs officer may ask additional questions as warranted. Customs management has issued operational instructions for questioning persons seeking to come into Canada. For a summary of these instructions, see APPENDIX D.

- **Have you ever been convicted of a crime or an offence?**

This question is better suited for secondary where privacy can be less of an issue and immigration officers have more time to ask the question and probe the answers. Consequently, when a Customs inspector suspects through questioning, lookouts (i.e. PALS), indicators (i.e. such as those associated with a non-genuine visitor), etc, that a person may have a criminal record, that person should be referred to immigration for further examination. If there is no immigration officer on duty this question may be asked by a primary customs inspector. However, PIL officers must take care when examining a person to ensure privacy. For example, a person must not be questioned about criminality in the presence of accompanying or other travellers.

4.2 Mandatory referral list

A mandatory referral list (see APPENDIX B) outlines the categories of persons that the primary examination officer must refer to Immigration secondary. The primary examination officer may also refer anyone else whom he or she deems necessary.

Customs officers on the PIL often do not have adequate time to ask all questions they would like to ask. Rather than holding up the travelling public, the Customs officer may refer a person to Immigration secondary where, after a few additional questions, an IO may admit the person. Customs officers are instructed that if they have any doubts concerning the admission of an individual, they should refer the person for an Immigration secondary examination.

Examples of types of referrals to secondary examination include cases where the Customs officer:

- has a question concerning the person's identity

4.3 Referral forms

- suspects that the person may have a criminal record
- is of the opinion that the person requires documentation, such as an employment authorization
- has a question concerning the length of time the person is requesting in light of the person's actual travel plans
- identifies the person as a person on the mandatory referral list, and
- determines that the passport or travel document requires stamping.

Secondary referrals can sometimes take from a few minutes to several hours to complete.

Customs has two forms that a PIL officer uses to refer persons to secondary examination: form E 311 (see APPENDIX C) at airports, and form E 67 (see APPENDIX E) at border POEs. The E 311 form is completed by passengers on airplanes destined to Canada and by some bus and train passengers. A passenger presents the form to the Customs officer at the primary inspection booth, who verifies the information and codes the form. The E 67 form is completed by the Customs officer at land borders. These forms:

- facilitate control and streaming of passengers
- provide data for Statistics Canada, and
- refer passengers to secondary examination by IOs, or by Health, Agriculture or Customs officers.

The forms carry a code or other symbol by which the PIL officer gives the reason for referral to secondary examination.

The immigration portion of form E 67 is coded:

T: time
E: employment
L: lookout
O: other cases

When using the E 67, the PIL officer will circle the appropriate letter to indicate the reason for referral.

In keeping with International Civil Aviation Organization international standards, the E 311 form does not contain the *T, E, L, O* coding. Instead the PIL officer writes *IMM* with the appropriate *T, E, L, O* code. For example:

- *IMM E* indicates an immigration referral because the person indicated an intention to seek employment in Canada, and
- *IMM O* indicates an immigration referral because the PIL officer doubts the purpose for which entry is being sought, or the person is an applicant for landing or any other reason not covered by the *T, E, L, O* code.

4.4 Adjournments and referrals from the PIL

Paragraph 12(3)(a) of the Act allows a Customs officer to adjourn an examination and refer the person being examined to an IO for the completion of the examination. The intent of this provision is to provide a legal means for referring a person from the PIL to a secondary immigration examination.

4.5 Adjourning examinations

Situations or circumstances may arise when an adjournment may be necessary to ensure a proper immigration examination. For example, you may require further relevant documents, information or other evidence to determine admissibility, or facilities may be inadequate or personnel not readily available.

You may adjourn an examination under A12(3)(a) in such circumstances as you deem proper if:

- the examination has been commenced
- the examination is to be adjourned for a very short time, and
- a Notice of Adjournment or Deferral of Examination under the *Immigration Act* (see APPENDIX F) is issued to the person.

There is no legal authority to impose terms and conditions on a person when you adjourn an examination under A12(3)(a). It is improper to use an Acknowledgement of Terms and Conditions (form IMM 1262) in these circumstances.

It is sufficient to issue a Notice of Adjournment or Deferral of Examination. If the person does not appear when requested, you may write a report under A27(2)(f).

You may detain a person for continuation of examination under A12(3)(b) if you have reasonable grounds to believe that the person is a danger to the public or would not appear for examination. If you detain a person for examination, you must inform the person of the reason for detention and notify that person of his or her right to counsel [*Canadian Charter of Rights and Freedoms*, ss. 10(a), 10(b)]. *You should obtain written acknowledgement from the person that he or she has been advised of the right to counsel and place it on your file.* You must also notify an SIO forthwith of the reasons for the detention [A103(4)].

If the person is not released from detention by an SIO within 48 hours [A103(5)], the SIO must request a detention review by notifying the Adjudication Division of the Immigration and Refugee Board with a Request for an Inquiry/Detention Review Pursuant to the Adjudication Rules (form IMM 5245) each and every time a detention review is necessary [A103(6)].

4.6 Deferring examinations and issuing rejection orders

You may reject a person when you cannot properly examine the person because of circumstances within the traveller's control, such as physical impairment due to alcohol or drugs [A13(1)(a)].

Subsection 13(1) of the Act is not intended to be used when you are unable to begin the examination of a person for reasons beyond the control of the traveller, such as inadequate facilities or staff.

A deferral of an examination under A13(1) should not occur except in those rare instances where you cannot *begin* an examination. Once an examination has begun, A13(1) is no longer applicable and your authority to adjourn is found in A12(3).

If you determine that a person cannot be properly examined, A13(1) provides two options:

- under A13(1)(a) you may defer the examination until such time as the person can be properly examined. Issue a Notice of Adjournment or Deferral of Examination under the *Immigration Act* (see

APPENDIX F) to the person. In this circumstance a rejection order is not issued and the person remains in Canada until he or she can be properly examined. If he or she does not appear as requested you may write an A27(2)(f) report.

- under A13(1)(b) you may make a rejection order against the person. In this circumstance you must serve a copy of the Rejection Order under Section 13 of the *Immigration Act* (form IMM 1217; see APPENDIX G) on the person against whom it is made, and on the owner or master of the vehicle by which the person was brought to Canada [A13(2)]. Bear in mind that the Act does not provide authority to detain under A13(1).

A rejection order made under A13(1)(b) ceases to be in force or to have effect when the person against whom it was made appears again before an IO and, in the opinion of the officer, can be properly examined by the officer.

5. SECONDARY EXAMINATIONS

5.1 The right to counsel

For the purpose of an immigration examination, a person is not entitled to counsel unless formally detained. It is only in the event of a detention that a person must be informed of the right to counsel and granted the opportunity to retain and instruct counsel without delay. The Supreme Court of Canada held that a secondary examination by an immigration officer at a port of entry does not constitute a 'detention' within the meaning of s. 10(b) of the *Charter* [*Dehghani v. Minister of Employment and Immigration*, S.C.C., File No. 22153, March 25, 1993]. In *Dehghani* the court further held that the principles of fundamental justice do not include the right to counsel for routine information gathering and to allow counsel at port of entry interviews would constitute unnecessary duplication.

This court decision has made it clear that the *Canadian Charter of Rights and Freedoms* only grants the right to counsel to those who have been detained. Persons at examinations are not normally detained or arrested, and therefore there is no right to counsel. It is immigration policy not to permit counsel at examinations unless the person has been detained.

Despite not being entitled to counsel, persons may be allowed the assistance of counsel during an SIO review, as long as the person acting as counsel is ready and able to proceed immediately. Counsel may include a lawyer, a law student, a law clerk, a consultant, a family member and a friend.

After detention, you must give a person who is detained the full reasons for the detention, inform him or her without delay of the right to retain and instruct counsel for the purpose of reviewing the detention, and give the person a reasonable opportunity to exercise that right.

A reasonable opportunity would include, for example, providing access to a telephone and telephone directory (with an interpreter, if needed), and informing the person of the possibility of applying for legal aid that may be available in the applicable province.

You must take care that the questions you ask the person concerned relate to admissibility, and are not information gathering for possible prosecution. The department has been unable to prosecute several cases because of the examining officer's failure to advise the person concerned of his or her right to counsel. Once the examining officer has made the decision that the person is admissible, any further questioning that could result in prosecution should be undertaken only after the person has been advised of his or her right to counsel.

One case illustrates the importance of this advice. A woman was seeking to come into Canada as a returning resident. During the course of the examination the examining officer detected that one of the pages of the passport appeared to have been altered. The officer questioned the person concerning his findings. The person admitted to the officer that the passport had in fact been altered. The examining officer contacted the RCMP. On arriving at the POE the RCMP advised the person of her right to counsel under s. 10(b) of the *Canadian Charter of Rights and Freedoms*. The person exercised her right and contacted a lawyer who advised her not to continue to answer questions without his presence.

The RCMP presented the case to the Crown prosecutor to have charges laid under the Act. The Crown prosecutor advised the RCMP that charges could not be laid because the rights of the person concerned under the *Charter* had been violated by the examining officer. The Crown prosecutor based this decision on the following factors:

- the altered passport did not effect the person's right to come into Canada as a returning resident
- the examining officer determined that the person concerned had not ceased to be a permanent resident within the meaning of A24, and
- after having made the decision that the person concerned should be allowed to come into Canada by right under A4(1), the examining officer continued to ask her questions with the intent of gathering information for a possible prosecution.

Once the examining officer had determined the person concerned had the right to come into Canada and that the altered passport did not affect that decision, the examination had been concluded. All other questioning from that point on should have been undertaken after the person had been advised of her rights under the *Charter*.

5.2 Confidentiality

Fast-flow counters are designed to deal with those cases which, by their very nature, can be dealt with expeditiously. You should deal with other cases at a normal work station, particularly cases involving information to which members of the general public should not be privy. These could include cases involving personal medical information, criminality, or landing of investors and entrepreneurs when it becomes necessary to discuss particulars of the investments.

Information obtained in the course of a secondary examination is confidential. The *Privacy Act* requires that information concerning clients must be released only to the client or the client's designated representative.

Subsection 8(2) of the *Privacy Act* notes the exceptions to this requirement. Under s. 8(2)(f) of the *Privacy Act*, the Commission entered into an agreement with the United States Immigration and Naturalization Service (USINS) for the exchange of information on persons who are, or there are reasonable grounds to believe would be, inadmissible or removable according to the immigration laws of both countries.

6. DECISION CRITERIA FOR SECONDARY EXAMINATIONS

6.1 Pre-questioning procedures

You should use the following framework as a guide in developing your examination. While it would be difficult to cover every possible situation, the following points will assist you in the basic issues that apply to most travellers. It is important to remember that you need not ask all questions of all persons.

Before you question a traveller, you should normally:

- obtain the person's identity documents appropriate for the situation, such as a passport, identity travel document, citizenship card, or birth certificate
- if the person is travelling by air, ask for the airline ticket, and
- ask the person if he or she is in possession of any immigration documents. This is important because it may assist you in establishing the reason the person is seeking admission to Canada.

Using the identity document presented by the person, you should complete a *name query* in the Field Operations Support System (FOSS). It is departmental policy that a FOSS check be completed for all persons referred to immigration secondary examination, except in the following situations:

Canadian citizens whose identity is **not** in doubt.

Canadian citizens come in by right and so there is no reason to query FOSS.

Visitors coming to Canada as part of an organized group.

Traditionally this category has not posed an enforcement problem.

Tourists, foreign workers and students who **currently hold visitor status** in Canada and do not raise doubt about their bona fides.

Most of these persons have already been checked through FOSS on their initial entry.

6.2 Basic questioning

Your basic questioning should normally cover the following areas, as appropriate:

a) identity:

- *What is your name?*

This will enable you to identify the person. Verify the name against the referral card, identity documents, and the airline ticket.

b) citizenship:

- *Of what country are you a citizen?*

You should ask this of each person being examined, so that you can immediately eliminate any person who has been referred to you in error. A Canadian citizen comes into Canada by right

[A4(1)]. You will be able to identify a person who requires a visa to visit Canada [A9(1)]. Ensure that the person's stated citizenship matches the identity document he or she presents. Once you have established that the person is a Canadian citizen, you should not routinely question a Canadian citizen seeking to come into Canada concerning his or her country of birth. You are concerned only with whether the person is a Canadian citizen. This applies to all persons arriving at a POE.

c) **residency:**

- *Where do you reside?*

By establishing the person's residency, you are seeking to eliminate any person you may allow into Canada without further delay. This question will also help you to determine visa and passport requirements, among others, and to determine if the person can return to the country of residency. This is important when the place of residency differs from the country that issued the passport or other identification. For example, if the person claims to be a resident of the U.S. and presents a Hong Kong passport, you will want to see the Alien Registration Receipt Card before allowing that person to proceed [A9(1), A24; *Immigration Regulations*, s. 14].

d) **intentions:**

- *What is the purpose of your trip? How long do you intend to stay in Canada? Where in Canada are you planning to go? Do you intend to look for work in Canada? Do you intend to study in Canada?*

You must presume that each person is an immigrant until you are satisfied that he or she is not [A8(2)]. Once you have established that the person is not someone who may enter Canada as of right, you must establish the intention of the person. Questions such as these examples may be appropriate [A2, A8, A10, A19(1)(h); *Immigration Regulations*, ss. 14, 15, 18, 19 and 20]. If you have determined that the person is in possession of an immigrant visa, see the procedures in chapter PE 4. If the person indicates that he or she intends to engage in employment while in Canada, see the procedures in chapter PE 7. If you have determined that the person intends to come to Canada to attend school, see the procedures in chapter PE 5.

e) **funds available:**

- *May I see your ticket please? How much in the way of funds do you have?*

Questions such as these examples are appropriate in determining if the person possesses the financial means of carrying out his or her intended travel plans, and of departing when the visit has ended. If the person advises that his or her financial needs will be provided by a relative or friend, it may be necessary to continue the questioning. You should satisfy yourself that the person will not seek employment or become a burden on the Canadian taxpayer by applying for social assistance [A19(1)(b)].

f) **personal history:**

- *What is your occupation? Do you intend to visit anyone in particular in Canada? Do you have any family or friends in Canada?*

In some interviews it may become necessary to establish ties to the person's homeland. In these cases, questions concerning the person's family in his or her homeland and in Canada may be appropriate, including questions concerning marital status.

g) **background:**

- *Do you or have you had any health problems? Have you ever been in a court of law for any reason? Have you ever been convicted of a crime or an offence? Have you ever been refused admission to or removed from Canada?*

In establishing admissibility it is important to inquire into the person's past. Questions such as these examples may be appropriate for assessing admissibility against those inadmissible classes specified in A19.

6.3 Passport requirements for immigrants

The purpose of s. 14(1) of the *Immigration Regulations* is to specify the type of passport or travel or identity document that an immigrant must have in his or her possession to be granted landing, and to provide a means of adequately identifying a person seeking landing.

Under s. 14(1)(a) of the *Immigration Regulations*, possession of a valid passport, other than a diplomatic, official or similar passport, is a mandatory requirement for every immigrant seeking permanent admission to Canada. If the immigrant is not in possession of a passport, see the paragraph below and section 6.4.

Normal passport or identity or travel document requirements for immigrants do not apply in the case of a Convention refugee who is in possession of a valid and subsisting immigrant visa, and when the issuing visa officer is of the opinion that it would be impractical to require that person to obtain a passport or identity or travel document [Immigration Regulations, s. 14(2)(a)].

6.4 Identity or travel document requirements for immigrants

To be acceptable in lieu of a passport, an identity or travel document must be one of:

- a valid and subsisting travel document issued to that immigrant by the country of which he is a citizen or national [*Immigration Regulations*, s. 14(1)(b)]
- a valid and subsisting identity or travel document that was issued to the immigrant by a country and that is of the type issued to non-national residents of the country of issue, refugees or stateless persons who are unable to obtain a passport or other travel document from their country of citizenship or nationality [*Immigration Regulations*, s. 14(1)(c)], or
- a valid and subsisting identity or travel document issued to that immigrant and specified in item I of Schedule VII of the *Immigration Regulations* [*Immigration Regulations*, s. 14(1)(d)].

6.5 Passport requirements for visitors

The purpose of s. 14(3) of the *Immigration Regulations* is to specify the type of document a visitor must have in his or her possession to be granted entry. This provision ensures that the visitor has adequate identification and that the person's readmission is guaranteed to the country that issued the passport or identity or travel document.

Under s. 14(3)(a) of the *Immigration Regulations*, possession of a valid passport, or identity or travel document, is a mandatory requirement for every visitor seeking temporary admission to Canada. If a visitor is not in possession of a passport, see below and section 6.6.

Normal passport, identity or travel document requirements for visitors do not apply in the case of:

- a) a visitor who is a citizen of the U.S.
- b) a visitor seeking entry from the U.S. or St. Pierre and Miquelon who has been lawfully admitted to the U.S. for permanent residence.
- c) a visitor seeking entry from Greenland who is a resident of Greenland.
- d) a visitor seeking entry from St. Pierre and Miquelon who is a citizen of France and a resident of St. Pierre and Miquelon.
- e) a member of the armed forces of a state designated for the purposes of the *Visiting Forces Act* who is seeking entry to carry out official duties for a visiting force of that country or for the Canadian forces. This does not apply to a person who has been designated as a civilian component of that visiting force. For a list of countries that have been designated for the purposes of the *Visiting Forces Act*, see IR 1 list titled **Countries Designated for the Purposes of the Visiting Forces Act**.
- f) a visitor who is seeking entry as or in order to become a member of the crew of a vehicle and who is in possession of a seaman's identity document issued to him or her under International Labour Organization conventions, or an airline flight-crew licence or crew-member certificate issued to him or her in accordance with International Civil Aviation Organization specifications.

6.5.1 U.S. citizens

The U.S. passport as well as the Certificates of Citizenship and Naturalization are considered prima facie evidence and are acceptable proof of U.S. citizenship.

The birth certificate and the U.S. voter's registration card, when accompanied by another document bearing a picture of the holder, are considered indicators and may be an acceptable proof of U.S. citizenship.

The U.S. military identification card, although a good supporting document, is not prima facie evidence of U.S. citizenship; you do not have to be an American citizen to be in the military.

Sometimes a verbal declaration will be sufficient to satisfy you that a person is an American citizen. In the end, it is up to you to decide whether a verbal declaration or, when deemed necessary, which documents will satisfy you as to a person's claim to citizenship. For example the following documents, driver's license- health card-school records-credit card, although not prima facie evidence, have been used along with a verbal declaration to satisfy an officer that a person was an American citizen.

To assist the travel industry, airlines and travel agents have been supplied with the following information:

6.6 Identity and travel document requirements for visitors

- a) *a U.S. passport is the ideal identification for U.S. citizens travelling to Canada,*
- b) *U.S. citizens may travel to Canada without passports if they have other means of establishing their citizenship, such as a U.S. birth certificate or naturalization papers,*
- c) *U.S. citizens travelling directly to Canada from the U.S. may be able to satisfy claims to U.S. citizenship by presenting identification documents such as a U.S. voter's registration card, medical card, credit card or educational records, and one other identification card containing the holder's photograph, such as a driver's licence.*

Diplomatic, consular, official and service passports meet the passport requirements for visitors.

To be acceptable in lieu of a passport, a visitor's identity or travel document must be:

- a valid and subsisting travel document issued to that visitor by the country of which he is a citizen or national and recognized by the country of issue as giving that visitor the right to enter the country of issue [*Immigration Regulations*, s. 14(3)(b)]
- a valid and subsisting identity or travel document that:
 - was issued to that visitor by a country
 - is recognized by the country of issue as giving that visitor the right to enter the country of issue, and
 - is of the type issued to non-national residents of the country of issue, refugees or stateless persons who are unable to obtain a passport or other travel documents from their country of citizenship or nationality, or who have no country of citizenship or nationality, [*Immigration Regulations*, s. 14(3)(c)], or
- a valid and subsisting identity or travel document issued to that visitor and specified in item 2 of Schedule VII of the *Immigration Regulations* [*Immigration Regulations*, s. 14(3)(d)].

6.7 Acceptable travel documents

It is the duty of visa officials to ensure that travel documents are acceptable for travel to Canada before issuing visas. You can normally assume that a document containing an authentic visa is acceptable for travel to Canada, unless there is a special reason to question its acceptability.

6.8 Examining passports

The purpose of reviewing a passport is to verify information that has been provided by the holder, or that appears on any immigration document issued to the person. You should examine each passport to confirm:

- the name of the holder
- the date of birth of the holder
- other tombstone data such as the person's physical description, place of birth, marital status and profession

- the country of citizenship
- the photograph of the holder
- the date of expiry, and
- visa pages, to determine previous trips to Canada or other recent trips that may be relevant to the overall examination of the person.

If in your opinion a more in-depth examination of the passport is required, see the IC manual for information on reviewing fraudulent or altered passports.

For passport requirements for visitors, see also section 6.5 above.

6.9 Visa requirements

Except in such cases as are prescribed, every immigrant and visitor shall make an application for and obtain a visa before that person appears at a POE [A9(1)]. Schedule II of the *Immigration Regulations* provides the list of countries that are visa exempt, and outlines various situations where a visitor's visa is not required. For information on the Immigrant Visa and Record of Landing form (IMM 1000), see chapter PE 4, *Examining Immigrants*.

6.10 Examining visitors' visas

You should examine each visitor's visa for:

- *issued at*: the name of the visa office that issued the visa
- *date of issue*: the date on which the visa was issued
- *expiry date*: the date after which the visa cannot be presented to gain entry at the POE
- *no. of entries*: the number of times the visa can be presented to gain entry at a POE
- *document no.*: the immigration document that has been authorized for the person; FOSS will contain the actual document, which you can generate on the full-document entry printer
- *category*: the type of visa that has been issued: for example, student, foreign worker or immigrant
- *surname*: the family name of the person to whom the visa has been issued
- *given name*: the first name or names of the person to whom the visa has been issued
- *passport no.*: the number of the passport for which the visa was issued, and
- *person(s)*: the number of people for whom the visa has been authorized.

For further information on visas, see the IC manual.

6.11 Affirmations for visas

An Affirmation for Visa (form IMM 1281) is issued to the holders of diplomatic or special passports of citizens from special-category countries. When a person presents an IMM 1281, you must apply the port stamp in the lower left corner of the visa (partly on the visa, partly on the page).

When the person surrenders copy 1 at the port of departure, the IO must compare it with copy 3 (or copy 2 where applicable), endorse it where indicated, and immediately send it to the visa issuing post.

POEs and ports of departure may destroy their copies following their respective actions.

6.12 Expired visas

A person who presents an expired immigrant visa (IMM 1000) is reportable under A19(2)(d) for A9(1). Furthermore, the Federal Court of Appeal has held that if a person is not in possession of a valid immigrant visa when he or she arrives at a POE, that person is not entitled to appeal to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board under A70(2)(b) or special consideration under A73(3) [*Minister of Employment and Immigration v. Ireland Pizzaro De Deraro*, FCA, Doc. No. A-916-90, March 1, 1993]. For further information on handling expired immigrant visas, see chapter PE 4, *Examining Immigrants*.

A person seeking entry to Canada with an expired visitor's visa is reportable under A19(2)(d) for A9(1). For information on completing A20 reports, see chapter PE 9, *A20 Reports, Voluntary Withdrawal and Directions to Return to the U.S.*

6.13 Admitting, refusing to admit or allowing to leave

At this point in the examination you should have gathered sufficient information to determine whether to admit the person concerned, to refuse admission, or to allow the person to leave Canada. If you decide to admit the person, see one of the following chapters for the appropriate admission procedures:

- PE 3 *Examining Canadian Citizens, Registered Indians, Returning Residents and Minister's Permit Holders*
- PE 4 *Examining Immigrants*
- PE 5 *Examining Students*
- PE 6 *Examining Visitors, or*
- PE 7 *Examining Foreign Workers.*

If you decide to write an A20 report or allow the person to leave, see chapter PE 9, *A20 Reports, Voluntary Withdrawal and Directions to Return to the U.S.*

7. SPECIAL EXAMINATIONS

7.1 Examining minor children

You may receive an inquiry from the public concerning children travelling to Canada with a friend or relative. You should counsel the public that the child should travel with proof of citizenship, and with a notarized letter from the legal guardian containing:

- authorization for the child to travel with another person and to be outside the country
- the name and telephone number of the guardian
- the destination in Canada, and
- the period of time the child will be in Canada.

Persons who are separated or divorced, should be advised to keep legal documents handy regarding custody rights. And when travelling in a caravan, parent(s) and children should arrive at the border in the same vehicle.

The Immigration Secondary Referral List (APPENDIX B) provides, under the category **5. Visitors**, for the mandatory referral to Immigration secondary of:

Young children, accompanied or alone, who arouse concern about the purpose of their trip to Canada or their welfare in Canada.

If you feel it necessary to interview a child in the absence of the child's guardian, you should take care to have a second officer present. When you examine a child who is travelling with a person who is not the child's legal guardian, you must be satisfied that the legal guardian has given permission for the child to be in the company of the care-giver. You must exercise caution to protect a child who may be the subject of a parental abduction or is otherwise endangered. You should not hesitate to examine a child without the presence of the care-giver if you have reason to doubt the care-giver. Being satisfied does not always involve producing documentation referred to above. If serious doubt remains after you examine all the parties concerned, you should make an attempt to contact the parent of the child.

On occasion the guardian may take offence to the questioning of minor children. You should take the time to explain the reasons for your questioning, and attempt to diffuse the situation.

7.1.1 "Our Missing Children" program procedures

a) BACKGROUND

"Our Missing Children" is a tri-departmental program of Citizenship and Immigration Canada, Revenue Canada, Customs and the Royal Canadian Mounted Police. Although each department has its own function, all three work together as a team. The objective of the program is to return abducted and missing children to their proper guardians.

b) AUTHORITY OF IMMIGRATION OFFICERS AND CUSTOMS INSPECTORS TO DEAL WITH MISSING CHILDREN

- **Immigration:**

The *Immigration Act* gives Immigration officers the power to examine all persons seeking admission to Canada. Some people have the right to come into Canada. This is the case for Canadian Citizens and Permanent Residents. Once an officer is satisfied that an adult or a child has the right to come into Canada, that person must be allowed to proceed. Beyond this there should be no need for an officer to ask any further questions.

Section: A4(1): "A Canadian citizen and a permanent resident have a right to come into Canada except where, in the case of a permanent resident, it is established that the person is a person described in subsection 27(1)."

However, in the case of travellers who are **not** Canadian citizens or Permanent Residents, Immigration officers have greater latitude. They have to be satisfied that it would not be contrary to the Immigration legislation to admit these travellers. They can therefore question more in depth these travellers in relation to the "Our Missing Children" mandate.

Section A12(4): "Every person shall answer truthfully all questions put to that person by an immigration officer at an examination and shall produce such documentation as may be required by the immigration officer for the purpose of establishing whether the person shall be allowed to come into Canada or may be granted admission."

Section A14(3): "Where an immigration officer is satisfied that it would be contrary to this Act or the regulations to grant entry to a visitor whom the officer has examined, the officer may grant entry to that visitor and impose terms and conditions of a prescribed nature"

- **Customs:**

In 1986, the Deputy Minister of Revenue Canada made a commitment which saw all Canada Customs Border points actively involved in the program of locating missing children and developing techniques in the detection of child abductors.

In 1993, in order to aid Customs Inspectors in carrying out this and other functions, an officer power study was initiated.

The recommendations put forward in this study, while currently under review in parliament, should see the provision of powers which will greatly enhance Customs Inspectors ability to ensure the safety of children crossing Canadian borders.

c) **DEFINITIONS AND CATEGORIES**

- **Abductions:** The unlawful removal or taking of a person against their will, or (in the case of children) against the will of their parent/legal guardian by use of force or deceit;
- **Custody Order:** An order of custody issued by a court.
- **E-514:** Our Missing Children Recovery Report common to Customs and Immigration.
- **Guardian:** Includes any person who has in law or in fact the custody or control of another person.
- **ICES:** Integrated Customs Enforcement System. Among the information which can be accessed from this system are up to date accounts of abducted/missing children cases.

- **Missing Child:** A missing child is anybody under 18 years of age whose whereabouts are unknown to their legal guardian;
 - there are circumstances surrounding the child's disappearance to suggest the child was removed without the guardian consent, or
 - there are circumstances strongly suggesting the child's safety is at risk;

Note: For the purposes of the "Missing Children Registry" and police forces, a missing child is a person that has not reached the age of 18. This includes infant, children and young person. However, different articles of the Canadian Criminal Code deal with minors and specific groups. For example, article 279 takes care of "a person" (no age group). Therefore, all others not covered in other articles fall under this article for the purpose of an abduction (therefore 16 and over).

- **PALS:** Primary Automated Lookout System. Among the information which can be accessed from this system are up to date accounts of abducted/missing children.
- **PIRS:** Police Information Retrieval System. A data base which is governed by the Canadian Association of chiefs of police, and is operated by the RCMP. Included among the information that Customs/Immigration personnel can access are all data on seizures (made by both Customs and RCMP), all existing intelligence files, and all information pertinent to current narcotics activity.
- **Profile:** An educated attempt to provide the police and other agencies with specific information as to the type of individuals who commits a certain type of crime.
- **Recovery:** A confirmed case of child abduction or runaway, whether or not it was reported as such to competent authority. *Example: a father, living in Germany, has permission to take his son to the country side for the week –end. However, instead of going to the country side, he and his son fly to Canada with two one way tickets. On arrival in Canada, the father is intercepted. The mother of the child is then contacted; she did not know that her husband had taken their son to Canada. This is considered to be a recovery.*
- **Restriction Order:** An order issued by the court, restricting travel to outside of city/town, province/state or country.
- **Categories of missing children** (There are four main types)
 - **Parental/family abductions:** Children who are taken from their legal custodian by a parent or family member, violating a custody agreement;

Note: Parental abduction may result in high trauma for the child; it is often done out of revenge against the other parent; the child is removed from school and other family members; most often the child is constantly on the run and in hiding, living a fugitive lifestyle. Parental abduction usually is a form of child abuse. In some cases the child does not know he/she has been abducted.

- **Stranger abductions:** Children that are taken by a person who is not their parent, relative or legal guardian without the knowledge or against the wishes of the parent or legal guardian.

Note: May involve child abuse including pedophile activity; baby snatching for the black market; child pornography; stolen for childless couple.

- **Runaways:** Children who leave home voluntarily without the knowledge or permission of their parent or guardian. (*Some provinces may record runaway children that are sixteen years of age and older as missing persons only*).

Note: May involve child pornography, sex rings, prostitution, drugs.

- **Throwaways:** These children are **not statistically captured** as part of the Our Missing Children program. Procedures for dealing with this type of situation are covered in the miscellaneous section. Children who do not leave voluntarily but instead are abandoned or forced from their home by a parent or guardian and not allowed to return. May involve child pornography, sex rings, prostitution, drugs.

d) CHARACTERISTICS

i) Parental Abductions

● Abductor – Predominant Characteristics:

- Both the mother and father are likely to abduct their own child.
- Mothers tend to abduct their children after a court order is made while fathers tend to abduct their children before a court order is made.
- Mothers who abduct their children tend to keep them for a longer period of time than fathers who abduct.
- The age range for parents involved with child abductions is 28 to 40 years.
- Fathers are usually employed while the mothers are likely to be unemployed. Socio-economic factors vary between cases.
- Communication usually occurs between the searching parent and the abductor.
- Majority of parental abductions are short-term and resolved within seven days.
- Various modes of transportation are used to move the child.
- In cases where the abducting parent violated an existing court order, 40% of these occurred more than 2 years after the divorce, 10% occurred more than 4 years after the divorce.
- Children tend to be taken during weekends or summer/winter holidays.
- The parent abducting the child is not likely to use physical force.
- Accomplices are used in less than half the cases, when they are present they are usually family members or current partners.

- Victim – Predominant Characteristics:
 - The majority of abducted children are between three and seven years of age. Children taken out of the country tend to be older (i.e. over the age of eight).
 - Both male and female children are equally likely to be abducted.
 - Children tend to be taken from the home. They are less likely to be taken from another residence or from a school yard

ii) Stranger Abductions

- Abductor – Predominant Characteristics:
 - In Canada very few abductions are committed by true strangers. Most of the abductors are relatives, friends or acquaintances.
 - In the U.S. a greater number are committed by strangers.
- Victim – Predominant Characteristics:
 - In the United States, half the victims abducted are twelve years of age or older.
 - Seventy-five percent of the victims are female.

iii) Runaways

- The majority (approx. 90%) of runaways are between the ages of ten and eighteen, with approximately sixty (60) percent of these between the ages of thirteen and fifteen.
 - Data collected from within Canada indicates that females are more likely than males to runaway. Further more, of females who runaway, those aged fifteen tend to comprise the largest group. American figures indicate that males and females are equally likely to runaway.
 - Runaways come from varying socio-economic and racial backgrounds. Of the cases reported to date, no trends have emerged to suggest that one type of child may be more likely than another to runaway.
 - Although it can not be isolated as the sole cause, many youth runaway with the intent of escaping from situations where neglect and abuse are common.
- e) PRIMARY INSPECTION LINE – When to refer a suspected missing child to secondary

QUESTIONS AND INDICATORS

Basic questioning:

The fact that one adult is travelling alone with a child should not in itself warrant a referral to secondary. The officer must examine the traveller further to determine their right to enter the country or their admission. If it appears after interviewing further that the traveller may seem to fit several indicators and profiles or there are some other suspicions, the officer should refer to secondary. The PIL Officer makes the initial decision as to admissibility.

Note: There is no reason in either situations to ask for a letter of permission from the absent parent when:

- (1) the birth certificate lists father as unknown;
- (2) when the custody papers show the travelling parent as having sole custody.

Reminder: Canadians and those persons who have the right to enter Canada must be referred to Customs secondary. Visitors to Canada will be referred to Immigration secondary. PIL officers often encounter adults travelling with children. Officers must satisfy themselves about their citizenship, the legitimacy of the relationship and for visitors of their admissibility. Officers should first establish the traveller's citizenship and residency.

When the travellers state they ARE Canadian Citizens or Permanent Residents:

- ask the adults what their relationship is to the child. (DO NOT ASSUME THEY ARE THE PARENTS;)
- ask if they carry proof of their citizenship;
- if they are related, ask if they carry proof of their relationship; do they have permission from the absent parent to travel with the child;
- if they are not related, ask if they have a note or permission from the parents;
- if necessary, ask to see their identity documents;
- you may wish to ask the child a few questions [see section g)].

RESULTS:

- if you are satisfied they are Canadian and this is a bona fide relationship, give them a handout (see APPENDIX R) and admit for immigration purposes;
- if you are satisfied they are Canadians but have suspicions about the bonafide's, refer to Customs secondary;

Note: United States and Canadian citizens are not required by law to carry identification when travelling into Canada. They can be admitted as long as the officer/inspector is satisfied of their citizenship. Consequently, parents without ID for their children should not be automatically referred to secondary simply for that reason.

- if you are not satisfied that they are Canadians, refer to Immigration for verification.

When the travellers state they are Visitors (i.e. not Canadian/Perm. Res):

- Ask the adults what their relationship is to the child. Do not assume they are the parent;
- ask if they carry proof of their relationship;
- ask them where they are going, for how long and the purpose;
- depending on the response to these questions, they may be a referral to Immigration, to determine admissibility;
- if there is no need for referral to immigration, you may still question the adult;
- if they are related, ask if they carry proof of their relationship; do they have permission from the absent parent to travel with the child;
- if they are not related, ask if they have a note or have permission from the parent;

- if necessary, ask to see their documents;
- you may wish to ask the child a few questions [as noted in section g)].

RESULTS:

- If you are satisfied that the information given is correct, that their admissibility is not in question and that this is a bonafide relationship, give them a handout and admit for immigration purposes;
- if you are satisfied of their citizenship but have some questions regarding the relationship, refer to Immigration secondary;
- if you are not satisfied of their citizenship and admissibility, or they are a mandatory referral, refer to Immigration secondary.

Note: If PIL officers want to alert the secondary officer to be aware of their suspicion, they should code the E-67 and/or E-311 accordingly, i.e. OMC and indicate for the secondary officer to contact the PIL officer. The use of non secure communications such as a radio transmission should be avoided. The persons being referred for an examination are entitled to their privacy. No member of the public should be made aware of a potential child abduction case. Utilize the E-67 or E-311 referral card in addition to any existing intercom system. Only use radio communications in an emergency situation where the relay of information is time sensitive and/or the child's safety is in jeopardy.

Indicators:

The following indicators are designed to help the Primary Inspection Officer (PIL) decide whether to refer a traveller for a secondary examination. Officers should keep in mind that the profile and indicators listed are not all inclusive. The majority of referrals that result in a recovery usually contain several indicators. Rarely do recoveries occur where there are only one or two of the indicators or profile points present. When the PIL Officer has a legitimate concern or suspicion about the child, the child and any accompanying adult should be referred to either Customs or Immigration secondary, which ever is appropriate.

Note: As mentioned earlier, Canadians often only carry driver's license when travelling across the CND/US border. Although this is not proof of citizenship, with a few questions, the officers can often be satisfied of their citizenship. Ask if they carry any other ID such as birth certificate.

- General indicators:
 - Display of unwarranted hostility to being questioned.
 - Responding to questions with obviously prepared answers.
 - Hesitation if asked unexpected questions.
 - Does the adult person answer for or block questioning of the child?
 - Does the adult produce documents willingly and congenially?
 - Does the documentation appear legitimate and appropriate?
 - Observe the eye contact between all the occupants in the vehicle/group; is it appropriate?
 - When questioning children note any undue hesitation in responding and any over reaction by adults to their answers.

- Travelling on school day.
 - Note the physical appearance of the child; new clothes, recently altered appearance i.e., haircut, makeup?
 - Note if any signs of physical abuse present; bruising, uncleanliness, malnourishment.
 - Child may seem unusually nervous, quiet or intimidated.
 - Inappropriate reason for travel especially considering the age of a young child.
 - Vague reasons given for the absence of the other parent.
 - Land Indicators:
 - Are the children squeezed between adults or appear to be physically controlled?
 - The amount of clothing inappropriate for length or purpose of trip.
 - Toys for the child, (does the quantity of the toys suit the duration of the trip, do they suit the age of the child, are they seasonally appropriate, do they appear to have been recently purchased indicating a spontaneous trip?)
 - Child pornography found in vehicle.
 - Are the minor passengers awake or asleep? Does it appear feigned? Is it an appropriate time to be asleep?
 - Time of border crossing in conjunction with other factors: is it appropriate to have a child along?
 - Does one adult answer for everyone in the vehicle?
 - Air Indicators:
 - Adult passenger with baby but no diaper bag, bottles, etc;
 - nothing is carried for child's amusement while on aircraft;
 - minimal luggage;
 - discrepancies between airline ticket and luggage (too much for short trip or vice versa);
 - was ticket purchased recently or does it appear to be a planned trip? Abductor may have purchased ticket well in advance while purchasing the ticket for the child at the last moment;
 - does the routing appear logical for the trip?
- f) **SECONDARY EXAMINATION(S) – Procedures to follow with a suspected missing child:**
- On occasion the guardian may take offence to the questioning of minor children. You should take the time to explain the reasons for your questioning and attempt to diffuse the situation.
- Customs: Canadian Citizens and Permanent Residents
- Note: Canadian and Permanent Resident cases only.*
- ask for the referral card;
 - confirm the number of travellers or occupants in the vehicle;
 - ask the adult for identification;

- request identification for the children.

Additional questions:

- where were you born?
- have you always lived in Canada;
- ask about the adult/child relationship;
- ask where the other parents or legal guardian is;
- ask where they live and how long they have been gone or how long they will be in Canada;
- conduct a CPIC, ICES and PIRS check on both the adult and the child;
- if the Canadians reside in the U.S., do an NCIC check;
- the Inspector may wish to call the other parent.

Based on the answers provided and the results of the computer checks, the officer will either be satisfied of the bonafides of the situation and admit them or investigate further by asking more questions. If released, be sure to give the parent one of the handouts (see APPENDIX T).

- Calling the other parent – Canadian cases

In the case of one parent travelling without the other parent, the Inspector may wish to call the absent parent to verify the situation. This **should** be done only when the Inspector has strong suspicions about the bonafide status of the traveller. The officer must ask the travelling parent for the phone number and explain why they would like to call the absent parent. The travelling parent may have some very good reasons for not wanting to call the absent parent and having them know that they are at the border. These wishes must be taken into consideration.

REMEMBER: We are dealing with people who have the right to enter the country.

If the travelling parent agrees, you may call the absent parent. Inspectors **must** keep in mind the rules of the privacy legislation and not reveal information about the travellers.

Note: Inspectors should ensure that no information on the travel plans or any other information on the travelling parent is released.

When calling, Inspectors should state who they are, where they are calling from, that they have (name of the child) with them and confirm the person is the other parent. Inspectors should then explain that Customs is part of “Our Missing Children” (OMC) program and that the Inspector would like to verify that the child is not listed as missing and should be travelling with the other parent. Explain that Customs wants to do their best to protect children crossing the border. Thank the parent for their time.

- Immigration: Visitors

Note: Visitors only, NOT Canadians or Permanent Residents.

- ask for the referral card;
- confirm the number of travellers or occupants in the vehicle;
- ask for identification for everyone;

- ask for identification for the children

Note: U.S. travellers often carry Driver's license across the CND/U.S. border. Although this is not proof of Citizenship, with a few other questions, the officer can often be satisfied of their relationship. Ask if they carry birth certificates or other ID to establish citizenship.

- ask where they live;
- ask where they are going;
- ask what the purpose is and for how long;
- ask about the adult/child relationship;
- ask where the other parent or legal guardian is;
- ask if they are carrying a letter of permission to travel with the child;
- you may wish to ask the child a few questions [see section g)];
- do a FOSS, CPIC and NCIC check on the adult and child; INTERPOL check through OMC in Ottawa;
- the officers may wish to call the absent parents.

CPIC CHECK: A number of CICs across Canada have access to CPIC and the CPIC reference manual. The manual contains information on the usage of CPIC in relation to missing children. See Appendix 114-4-c of CPIC manual for more information. In cases of missing children you should always check CPIC, since it contains the names of all the missing children which have been forwarded to the Missing Children Registry from enforcement agencies. FOSS has an incomplete listing.

Based on the answers provided and the results of the computer checks, the officer is either going to be satisfied of the bonafide status and admit them or investigate further by asking more questions. If admitted, give the parent one of the handouts (see APPENDIX T).

- **Calling the other parent – Visitor cases**

In the case of one parent travelling without the other parent, the officer may wish to call the absent parent to verify the situation.

The officer should ask the parent or child for the phone number. This is obviously going to be less problematic when dealing with U.S. cases.

Officers should state who they are, where they are calling from, that they have (name of the child) with them and confirm the person is the other parent.

Officers should then explain that Immigration is part of the OMC program and that the officer would just like to verify that the child is not missing and should be travelling with the other parent.

Officers should be careful not to reveal too much information on the travellers. Instead, they should elicit information from the absent parent.

Explain that Immigration wants to do its best to protect children crossing the border and thank the parent for their time.

- **Immigration secondary: What to do if a Canadian case is referred?**

It may happen from time to time that a suspected case of missing children involving Canadian Citizens or Permanent Residents is referred to Immigration. In such an eventuality remember that

the welfare of the child is paramount. Consequently, you should not refer the case back to Customs but rather deal with the situation. If you suspect a missing children situation, you must contact the responsible law enforcement agency, i.e. RCMP, local police, etc. and take appropriate action. Remember that the questions you may ask the person concerned relate only to admissibility. Once you have established the admissibility of a Canadian Citizen or a Permanent Resident you have no authority to ask any other questions. Any supplementary information gathered which does not relate to Immigration requirements for entry to Canada may not be admissible as evidence should prosecution be necessary:

THE SITUATION

WHAT TO DO

- | | |
|---|---|
| 1) The child is a visitor and the adult is also a visitor. | You have the authority to question both parties. |
| 2) The child is a visitor and the adult is either a Canadian Citizen or Permanent Resident. | You have the authority to question the child; the responsible law enforcement agency would have to question the adult if prosecution is contemplated. |
| 3) The child is a visitor travelling by him/herself. | You have the authority to question the child. |
| 4) The child is a Canadian Citizen or a Permanent Resident and so is the adult. | Set-up local procedures with Customs and contact the responsible law enforcement agency. |
| 5) The child is a Canadian Citizen or a Permanent Resident and the adult is a visitor. | You have the authority to question the adult. |
| 6) The child is a Canadian Citizen or a Permanent Resident travelling by himself. | Set-up local procedures with Customs and contact the responsible law enforcement agency. |

g) SECONDARY EXAMINATION(S): How do you interview a child

Each case examination must be considered on an individual basis utilizing the existing evidence.

Questioning of travellers on adult-child relationships can be a difficult situation. Likewise, for legitimate travellers it can be uncomfortable having their relationships questioned. Officers should ensure that these situations are handled with tact and diplomacy. When questioning a child, officers should adopt a less formal line of questioning as outlined below.

QUESTIONING AND SEPARATING THE ADULT AND CHILD

As a matter of course a child should not be separated from the adult, particularly if it is a parent, in order to be questioned. Only in exceptional circumstances will the secondary officer suspect an abduction case.

In these rare cases **where the evidence points to a possible abduction situation**, the officer may wish to question the child separately. This should only be done in these exceptional cases and for only as long as the child appears comfortable. A child should never be forced to accompany an officer out of sight of the adult.

The majority of cases that are referred to secondary involving an adult and child are legitimate situations. After a few questions and database checks, the officer can usually be satisfied that the situation is bona fide. If you are not satisfied, try to contact the other parent first [see section f)]. If the officer feels that it is important to question the child alone, the adult must be informed of the reasons for wanting to talk to the child separately. I.e., verification of the reported purpose of the trip, relationship, etc. The officer should then question the child within eye sight but out of hearing range of the adult.

- Guidelines for Interviewing children

The following are some general guidelines that can be used to assist an officer when interviewing a child:

- Use language the child can understand and look the child in the eye while speaking;
- make sure the child understands what you have said;
- try to speak at the child's level; don't talk down to them;
- young children are often shy, embarrassed and unfamiliar with abduction terminology;
- older children tend to have a fear of authority figures;
- close your interview with the child on a positive and supportive note with an explanation of why you asked the questions you did;

You should consider whenever possible to have female officer interview girls and male officer interview boys. Also, have toys available for the children, i.e., teddy bear.

When an officer has a confirmed abduction case, the following are some guidelines that can be used to assist an officer when interviewing the child:

- Recognize that you are a stranger and the child will be nervous or anxious about interacting with you.
- The child may be frightened at being separated from the accompanying adult, especially if the adult is their parent or guardian.
- Explain clearly to the adult why we wish to question the child.
- Reassure the child that they are safe.
- Demonstrate concern and compassion and give your full attention to the child.
- If the child becomes very emotional, allow the expression of feeling.
- Try to provide comfortable physical surroundings for the child.
- Try to avoid any show of prejudice, cynicism, overreaction or overzealousness.
- Appreciate the fact that your uniform and authority may be overwhelming or anxiety-provoking for the child.

- Try to answer the child's questions and concerns as truthfully as possible.
- If the child is turned over to a police officer, social worker or other agency:
 - A) Be present and make the introductions if possible.
 - B) Explain who the person is and why he/she is going with someone else.

● **Sample Questions**

The following are some examples of questions to ask children:

- What is your name?
- How old are you?
- Where do you live?
- Who is the person travelling with you?
- Do you know where you are going?
- How long will you be here?
- Who do you live with at home?
- Does your mother/father know where you are today?
- When was the last time you saw them?
- If so, where are they today?
- Are you going anywhere else?
- Do you know your phone number?

For cases where the parents are separated:

- Who do you normally live with, your mom or your dad?
- How often do you see your mom or your dad?
- When did you last see them?
- Do you know where you are going today?
- Do you have their permission?
- When will you see them next?
- Do you go to school?

Depending on the answers, these may lead to further questions regarding a possible abduction situation.

h) SECONDARY EXAMINATION(S): Procedures to follow with an identified missing child

The steps to be taken in the event of an interception of a missing child are illustrated in various situations that might occur depending on the type of abduction, a runaway or the citizenship of the traveller. It must be stressed that these are guidelines only. Situations will change and procedures will vary from region to region.

- What to do in confirmed abduction cases;
 - Canadian Citizens and Permanent Residents.

Contact your local police agency and inform them of the situation. Be sure that it is clearly understood that a quick response by police is necessary. Secure the parent and the

child. The overriding factor in this situation is the child's safety. If the child appears comfortable with the adult, do not separate them and ensure that the child remains safe and is never in any type of danger. Keep factual notes of the event; record statements, times, observations and information obtained. Do not continue questioning once the offence has been discovered. Inform the adult that the police will be notified, surrender the subjects to the police as soon as possible. **Complete an Our Missing Children Report, E-514** (see APPENDIX R) and forward to your regional coordinator.

— U.S. Citizens and Resident Aliens

(1) Take the appropriate enforcement action against the abductor, i.e. 20 report, i.e. A19(1)(h), or 19(1)(c.1)(ii) for 281, 282 or 283 of the criminal code, or any other appropriate sections. Possible charges under the *Immigration Act* could also be considered, i.e. 94(1)(h). The child should be reported 19(2)(c).

(2) Call the United States Immigration and Naturalization Service (USINS) to alert them of the confirmed abduction case and the facts known, advise them when the parent and child will be returned. Confirm that USINS has the authority to hold the subjects for the police. If USINS cannot hold the subjects, contact the nearest US Police Department directly for assistance. **NEVER RETURN A CONFIRMED ABDUCTION CASE TO THE UNITED STATES WITHOUT CONFIRMING THAT US AUTHORITIES WILL BE ON SITE AND WILL TAKE APPROPRIATE ACTION.**

(3) The child's safety must be assessed. It may be appropriate to detain the child with the parent where facilities allow; in those areas or cases where separation of the child and abductor occurs, contact the local child protection agency to take custody of the child.

(4) Each officer will need to decide case by case as to what arrangements should be made in returning the subjects to the United States in a safe manner. The overriding factor in every situation is the safety of the child.

(5) Complete an Our Missing Children Report, E-514 (see APPENDIX R) and forward to your regional coordinator.

Note: All these procedures can also be followed by Immigration Investigators who deal with cases of missing children inland. They may want to modify them according to their particular situation, i.e. substitute 27 Report for 20 Report, etc.

— Other nationalities

(1) Call the Registry for an Interpol check. Note that Interpol may take one to several days;

(2) Contact the Consulate of the country of the child's nationality. They may be able to assist you. The alleged abductor's name may be on a list of people who are not to be given passports;

(3) Get in touch with the municipal police of the country of origin. Remember time zone differences;

(4) Call the person who has the legal custody as a last resort. Experience has shown that the local police will usually go to the home of this person. This will lend more credibility to the news of the discovery given to the parent(s).

(5) Notify the Provincial Central Authority for the Hague Convention. They can assist in the quick return of the abducted child.

(6) Take the appropriate enforcement action against the abductor, i.e. 20 report, i.e. A19(1)(h), or 19(1)(c.1)(ii) for 281, 282 or 283 of the criminal code, or any other appropriate sections. Possible charges under the Immigration Act could also be considered, i.e. section 94(1)(h). The child should be reported 19(2)(c).

(7) The child's safety must be assessed. It may be appropriate to detain the child with the parent where facilities allow; in those areas or cases where separation of the child and abductor occurs, contact the local child protection agency to take custody of the child. The particular provincial laws must be consulted to ensure it is possible to do so.

(8) When returning the child, efforts should be made to contact the receiving country's border or law enforcement agency to ensure action will be taken on the child. This should be done through OUR MISSING CHILDREN office at RCMP Headquarters.

(9) Complete an Our Missing Children Report, E-514 (see APPENDIX R) and forward to your regional coordinator.

- What to do in runaway cases:

- Canadian Citizens and Permanent Residents.

Confirm with the police agency which has jurisdiction over the runaway person that you have them at your border point. Follow the direction of that police agency. Legislation regarding runaways differs between Provinces and States. Some jurisdictions will simply cancel the missing person report once it is known that the subject is alive and not a victim of foul play. If the police agency does not wish to transport the subject, but the subject wishes to return home, assistance for the subject may be obtained from various service agencies (see miscellaneous section). In either case the person is free to go once you have established their right to enter Canada and confirm with the originating police agency that it requires no further action in this case. **Complete an Our Missing Children Report, E-514 (see APPENDIX R)** and forward to your regional coordinator.

- U.S Citizens and Resident Aliens.

(1) Take the appropriate immigration enforcement action if required, i.e. 20 report.

(2) Confirm with the police agency which has jurisdiction over the runaway person that you have them at your border point. Follow the direction of that police agency. Legislation regarding runaways differs between Provinces and States. Some jurisdictions will simply cancel the missing person report once it is known that the subject is alive and not a victim of

foul play. If the police agency does not wish to transport the subject, but the subject wishes to return home, assistance for the subject may be obtained from various agencies, (see miscellaneous section). In either case the person is free to go once you have established admissibility and confirmed with the originating agency that it requires no further action in this case.

(3) Complete an Our Missing Children Report, E-514 (see APPENDIX R) and forward to your regional coordinator.

7.1.2 Detention of minor children

Managers and assistant managers have the authority to decide whether or not to take enforcement action against unaccompanied minors, particularly in relation to detention. For immigration purposes, an unaccompanied minor (i.e. a child less than 18 years old) *"is a child who arrives in Canada or who is already in Canada, who claims or does not claim refugee status, who is alone or if accompanied by another person, it is not a person described in the definition of member of the family class for the purposes of subsection A19(2)(c) or A33, and who does not arrive in Canada to join his/her father, mother or guardian who are already in Canada"*. An unaccompanied minor can be admitted to Canada if he or she meets the general immigration requirements.

That said, caution must be exercised in applying the provisions of the Act on detention when an unaccompanied minor is involved. Naturally, every effort must be made to avoid having to detain a minor child. Before any action is taken, it is important to determine how self-sufficient the child is, or whether someone is willing to look after the child. The CICs should make the necessary arrangements with local child welfare agencies or social or child protection services to determine whether they can take charge of the minor, if necessary, until immigration procedures have been completed. It should be borne in mind that concern for the protection of a child does not constitute a ground under A103 for detaining a child. Detention of a minor must be a last resort, but it is not excluded in cases, for example, where the minor has been convicted for violent crimes or he or she constitutes a danger to the public. In such extreme cases, if the minor is detained, he or she should be held apart from the rest of the incarcerated population.

7.2 Persons under removal order

A person against whom a removal order has been made who has been removed from or otherwise left Canada, but who has not been granted lawful permission to go into any other country and is returning to Canada by force of circumstances, is neither a visitor nor an immigrant, but is still required to leave Canada [A54(1)]. The removal order remains in effect until the person's removal can be effected or the order is quashed. You must allow the person to come into Canada by law [A14(1)(c)].

Should a person under a removal order be returned to Canada without having been admitted to another country, you should take the following action:

- confirm that the person is in possession of a document stating that he or she has been refused admission to the country to which the person was seeking entry

- it is reasonable to expect that the person is returning to Canada on the next available flight from the country to which he or she has been removed; if there has been a lengthy delay between the person's departure and return, examine the person to ensure that he or she has not been admitted to another country
- if you are satisfied the person is described in A14(1)(c), allow the person to come into Canada; the person is subject to arrest for removal where appropriate [A103(2)(b)], and
- counsel the person that he or she is still under removal order, and that any bonds or terms and conditions are still in effect.

If the person had been in detention before departure, detain him or her under A103(2)(b), and seize the person's travel documents and forward the documents to the office handling the removal, with details of the case [A110(2)(b)].

7.3 Persons with certificates of departure

A person who is in possession of a certificate of departure (forms IMM 56 and FOSS-generated IMM 1442) and who has not been admitted to another country has not met the requirements of the departure order. The order remains outstanding, and the person is subject to arrest for removal. For guidelines on certificate of departure cases, see chapter PE 15, *Verifying Departure*.

7.4 Direct-backs

A person who has been directed to return to the U.S. and who seeks to come into Canada for reasons other than to appear before an SIO or an adjudicator, as the case may be, is considered to be seeking admission. If such a person remains inadmissible for the same reasons, and if an SIO or an adjudicator, as the case may be, is not reasonably available, the person may be again directed to return to the U.S. to await the SIO or adjudicator. In these circumstances it is not necessary to write a new A20(1) report.

Remember that as an IO you have authority only to direct a person back to the U.S. to await an SIO [A20(2)]. If you are an IO who is also an SIO, you have the additional authority under A23(5) to direct a person back to the U.S. to await an adjudicator.

You should bear in mind that time may be required by the person to allow for travel to the location to appear before the SIO or adjudicator, and the circumstances may warrant allowing the person forward at an appropriate time in advance of the scheduled date. This is particularly so if the person approaches a POE other than the one at which he or she was originally reported.

7.5 Unauthorized border crossings

If you become aware of a person who is attempting an unauthorized border crossing, you must first notify the RCMP. The primary responsibility for patrolling the border rests with the RCMP. Once advised of the immigration violation, the RCMP may grant assistance as provided in the Memorandum of Understanding between the RCMP and the department. Customs officers may also be interested in violators, because smuggled goods may be involved. POEs should work out local action plans with law-enforcement agencies if plans are not already in place.

In some circumstances no law-enforcement agency will be available to assist you. The POE manager or officer in charge must then decide whether or not you will conduct the investigation outside the port. You must always give priority to the port operation. You must not attempt to apprehend the person or to investigate an occurrence alone.

Your role is to locate and formally to report persons who appear to be in violation of the Act and its regulations. You should be concerned with your health and safety, as follows:

- you are not obliged to perform your duties in a situation where you determine that a threat to your safety exists; you must request police assistance, and
- you should use proper communication equipment to keep in contact with the POE should you require assistance.

It is imperative that you do not assume the role of a border-patrol officer performing surveillance.

You should give consideration to requesting that the RCMP lay charges under A94(1)(a) or A94(1)(b) when a person eludes examination or comes into Canada by improper means.

7.6 Persons coming forward to attend IAD hearings

A person who has a pending appeal to the IAD may arrive at your POE with written authorization from the IAD indicating that under A75, the appellant is allowed to return for the hearing of his or her appeal. In such a case you must:

- verify the identity of the appellant, ensuring compliance with any stipulated conditions imposed by the IAD
- allow the person returning under A75 to come forward for the IAD hearing; to satisfy the requirements of A12 you may choose to report the person, but you must allow the person forward and the SIO should not cause an inquiry or issue a removal order
- if the person is no longer inadmissible for the original grounds that gave rise to the removal order and subsequent appeal, is not inadmissible on any other grounds, and meets all the requirements of a visitor, document the return of the appellant on a visitor record (IMM 1097) and in the *Remarks* section make the note: *Authorized by the Immigration Appeal Division pursuant to A75*
- create a file for appropriate follow-up
- if appropriate, impose the condition that the person furnish evidence of compliance with the terms of entry by reporting to a CIC before leaving Canada, if the appeal is dismissed, and
- in the case of an appellant coming from the U.S., provide the immigration official in charge of the opposite U.S. POE with appropriate written notice to ensure that Canada's interests under the Reciprocal Arrangement are protected.

7.7 Authorizations to enter Canada and transfer orders under A14(1)(d)

An IO on the PIL must refer to you any person seeking to come into Canada under the authority of an Authorization to Enter Canada (see APPENDIX H) issued by the Minister of Justice of Canada or a Transfer Order (see APPENDIX I) of a Canadian court.

7.7.1 The *Mutual Legal Assistance in Criminal Matters Act*

The *Mutual Legal Assistance in Criminal Matters Act* (*MLACM Act*) and treaties implemented under its authority are used by prosecutors, police agencies and other government investigative agencies responsible for the investigation and prosecution of criminal offences. Assistance provided on a reciprocal basis may include activities such as locating and questioning witnesses, obtaining search warrants, locating suspects and fugitives from justice, obtaining evidence, and transferring persons in custody for the purposes of assisting in investigations or testifying in criminal proceedings.

The *MLACM Act*, proclaimed on October 1, 1988, enables Canada to implement treaties signed with foreign states obliging Canada to provide legal assistance in the investigation, prosecution and suppression of offences. The Minister of Justice is responsible for the implementation of treaties and for the administration of the *MLACM Act*. Canada is now in the process of negotiating mutual legal assistance treaties with a number of other countries. APPENDIX J lists the countries with which Canada has signed agreements, the dates the treaties and agreements came into force, and the specific countries with transfer provisions.

The provisions of the *MLACM Act* prevail over those of the *Immigration Act*, except for statutes prohibiting the disclosure of information or prohibiting its disclosure under certain conditions. The effect on the department's operations of the *MLACM Act* and any treaties that flow from the *MLACM Act* are limited to three areas:

- facilitating the transfer of persons at POEs
- taking enforcement action against persons who are allowed to come into Canada for the purposes of mutual legal assistance and who violate any of the terms and conditions of an authorization to enter Canada granted by the Minister of Justice, and
- exchanging information.

The *MLACM Act* allows for testimony in a foreign state by IOs who during the performance of their duties encounter persons who are wanted for crimes in a foreign state or are involved in a criminal activity.

The *Privacy Act* prohibits release of personal information, unless the release of information is permitted under a treaty or arrangement between the government of Canada and a foreign state. Mutual legal assistance treaties with those countries listed in APPENDIX J constitute such agreements to release relevant personal information in accordance with the provisions of s. 8(2)(f) of the *Privacy Act*.

Whenever possible, the Minister of Justice will provide notice of the place, date and time of arrival of a person coming to Canada for the purposes of mutual legal assistance to the responsible immigration representative listed in APPENDIX K. The representative will in turn notify the POE concerned to ensure that an IO is present, and to facilitate the person's movement through the POE.

7.7.2 Authorizations to enter Canada

Under s. 40 of the *MLACM Act*, the Minister of Justice has the authority to grant an authorization to enter Canada (see APPENDIX H) to a person in a foreign state who is a member of an inadmissible class described in A19.

It is important to remember that persons arriving at POEs and seeking to come forward under an authorization to enter Canada signed by the Minister of Justice do not come within the department's jurisdiction. Such persons are *not* subject to normal passport and visa requirements, nor can you examine them to determine admissibility.

The person whose presence is requested in Canada may or may not be incarcerated. Incarcerated persons will always be escorted by law-enforcement officers from one institution to the other. Persons who are not incarcerated in a foreign state and who are coming to Canada in compliance with a request made by a Canadian investigative or prosecuting authority will be met at the POE by a police officer.

In both incarcerated and non-incarcerated cases, the escorting officer or the police officer will present you with a copy of the authorization issued by the Minister of Justice. The authorization will indicate the person's name, citizenship, the destination, the specific period of time during which the person is authorized to remain in Canada and any additional terms and conditions that the Minister of Justice deems appropriate [*MLACM Act*, s. 40(1)]. The terms and conditions may include reporting to immigration officials during the person's stay and may be varied by the Minister of Justice, particularly with respect to the granting of any extension of the time period for which the person is authorized to remain in Canada.

When you receive the immigration copy of the authorization to enter Canada granted by the Minister of Justice, you must forward it directly to the Regional representative responsible for Enforcement listed in APPENDIX K. The Regional representative will ensure that the authorization is sent on for monitoring purposes to the responsible CIC in whose area the person concerned is authorized to stay.

A person who comes into Canada under a Minister of Justice's authorization, and who fails to comply with the conditions set out in the authorization, is deemed for the purposes of the *Immigration Act* to be a person who entered Canada as a visitor and who remains after ceasing to be a visitor. In such a case the department has jurisdiction to report the person concerned under A27(2)(e) and to proceed with inquiry or removal action [*MLACM Act*, s. 40(3)].

7.7.3 Transfer orders

A Canadian court will make a transfer order (see APPENDIX I) at the request of a foreign state. The Minister of Justice may approve the transfer of a sentenced inmate from a Canadian prison to a foreign jurisdiction. The transfer will take place when the inmate is required to testify in a foreign court or can otherwise assist in the investigation of a crime. The transfer order will specify the name and citizenship of the detainee, the place in Canada at which the term of imprisonment is being served and the date on or before which the detainee is expected to be returned to the original place of confinement in Canada.

Persons returning to Canada under the authority of a transfer order who are *not* the subject of an unexecuted removal order are subject to examination if the person was incarcerated before leaving Canada. You should complete a Detention Order (form IMM 421), indicating the person's place of confinement before he or she left Canada. The transfer order will provide you with this information. Give a copy of the IMM 421 to the escorting officer.

In the case of a non-Canadian detainee who is a sentenced prisoner in Canada, the escorting officer will give you a copy of the transfer order on the person's return to Canada. You must forward this copy of the order to the Regional representative of Enforcement listed in APPENDIX K, who will ensure that it is forwarded to the responsible inland CIC for monitoring and follow-up as necessary. The inland CIC maintains the copy of the transfer order on file, in case evidence is required in the future to the effect that any subsisting removal order at the time of a detainee's transfer to a foreign state was not executed by reason only of the person's transfer.

7.7.4 Assistance and information

An unescorted person who is inadmissible under the Act may approach a POE claiming to be coming to Canada for mutual legal assistance purposes. If so, and no police officer is on site to meet the person, you should immediately contact the International Advisory Group, Department of Justice, Ottawa to request confirmation and advice before proceeding with the case (tel: 613-957-4758 or 613-957-4768).

If you or a Regional office requires clarification or confirmation of the circumstances of an individual case, contact the International Advisory Group.

You should direct immigration-related questions to:

- Port of Entry Control, if the question relates to entry procedures (tel: 819-994-2637), or
- the appropriate Case Management Unit, if the specific case is of interest to the Minister or of a contentious nature.

Information regarding persons arriving in Canada under the *MLACM Act* is considered sensitive. Interception by unauthorized persons may endanger the safety of the escort officer, inmate or other persons. It is imperative that you transmit all information regarding these cases through secure channels.

7.8 Persons extradited to Canada from countries other than the U.S.

When examining a person who is coming to Canada under extradition proceedings from a country other than the U.S., you should obtain (at a minimum) the following information for control purposes, either from the person being extradited or from the person's escort:

- for a Canadian citizen: the person's name and proof of citizenship
- for a Canadian permanent resident: the person's name, date of birth, country of citizenship, date of landing in Canada, and the place where the trial is to be held, and
- for any other person: the person's name, date of birth, country of citizenship, place of permanent residence, and the place where the trial is to be held.

If the extradited person is not a Canadian citizen, you should forward a memorandum containing all information relevant to the person's admission (including a copy of a Minister's permit, if applicable) to the CIC nearest the place where the trial is to be held, with a copy to the Director of Enforcement in that region.

**7.9 Examination procedures
and the excessive
demands criteria
A19(1)(a)(ii)**

There are two categories of persons who should be referred to Immigration secondary because their admission might reasonably be expected to cause excessive demands on our social or health services: a) visitors who are seeking medical treatment b) persons who are obviously ill.

- a) **Visitors who are seeking admission for medical treatment:** Visitors who seek admission in order to undergo medical treatment are a mandatory referral to Immigration secondary.
- b) **Visitors who are obviously ill:** It is not possible, given the time constraints of the PIL examination process, to assess the health status of every visitor seeking admission to Canada. Rather, PIL officers should adopt a more practical approach, based partly on visual risk assessment, partly on common sense and experience. When faced with a person who appears ill, an officer should ask him or herself: "Should that person be travelling"?

This approach requires officers to consider whether the visitor appears obviously ill. By "obviously ill" we mean that there are obvious signs that immediately strike an officer. The key is that officers should not be consciously looking for medical problems as part of their examination but rather deal with those who are so obvious that they would not be missed by a "reasonable person". Examples could include a visitor who: a) either acts abnormally; b) has incoherent speech; or c) is on a stretcher.

When PIL officers encounter visitors who are seeking medical treatment or are obviously seriously ill (either physically or mentally), they should refer them for a secondary Immigration examination by an IO for additional questioning.

Using this common sense approach, PIL officers have historically been successful in referring those few visitors who are likely to be medically inadmissible.

Guidelines for the examination by immigration officers of persons suspected of being medically inadmissible pursuant to A19(1)(a)(ii) – excessive demands

- a) **Visitors who are seeking admission for medical treatment:**

Persons coming to Canada for medical treatment are expected to produce evidence that the treating physicians and institutions will provide the treatments required for the pre-determined medical condition and that they are satisfied with payment arrangements. Usually, this should be sufficient evidence of adequate arrangements. Agreement with a hospital and treating physician should clearly indicate what treatment will be provided and indicate that the care provider is satisfied with the agreement for payment. The applicant must also satisfy the Immigration Officer (IO) that all associated costs, including travel and accommodations have been paid for or will be paid for without any cost to the taxpayer.

Applicants who provide satisfactory evidence that they will pay the costs of their treatment (usually through an agreement with the Canadian treating physician and medical institution) and meet all other requirements for visitors, DO NOT require a Minister's Permit to enter Canada.

Where it is determined that the applicant's circumstances have changed since the letter of agreement was issued so as to affect his or her "ability to pay", IOs can ask for evidence that the care provider in Canada is aware of this and the arrangements are not affected.

Pursuant to Article 22 of the Canada/Quebec Accord, Quebec's prior consent is required with respect to persons entering that province to receive medical treatment.

A visitor who cannot satisfy an IO concerning the payment or the arrangements for the services, can be reported A19(2)(d) and A12(4) for failing to "produce such documentation as may be required by the immigration officer for the purpose of establishing whether the person shall be allowed to come into Canada...". Officers could also determine whether other inadmissibilities are applicable, i.e. A19(1)(h), A19(1)(b).

Note: Applicants who are assessed as likely to be a danger to public health or safety are inadmissible under A19(1)(a)(i) and need not be offered an opportunity to demonstrate that they can meet the costs of treatment unless consideration is being given to issuing a Minister's permit to allow the applicant to come into Canada despite the potential danger to public health or safety. For example, a person suffering from active TB would remain inadmissible even if he or she made all the arrangements for the treatment of a back problem or an operation.

b) Visitors who appear ill:

The following is an appropriate line of questioning when dealing with an individual who appears unwell:

- Have you been treated by a physician recently?

If the answer is YES, ask:

- what were you treated for?
- when were you treated?
- will you require further treatment during your visit?

If you are satisfied with the answers and it does not appear that the person will require treatment in Canada, he/she may be admitted providing there is no other inadmissibility.

If you are not satisfied with the responses you may want to consult with a health specialist (see below).

If the answer is NO, explain that he/she does not appear well and ask:

- are you well?

If the visitor says he/she is not well, ask:

- what is wrong?
- will you be seeing a physician in Canada?

If you **are satisfied** with the responses and it does not appear as though the person will require medical treatment in Canada, he/she may be admitted providing there is no other inadmissibility.

If you are **not satisfied** with the responses or the visitor insists that he or she is well, you may want to consult with a health specialist. Where appropriate and with prior consultation

with an health official, you may refer the individual for medical assessment (see PE 9, section 2.2.1 for details) or provide an opportunity for the person to withdraw their application. Where an immigration medical examination is performed, a medical officer will provide an assessment under 19(1)(a). However, only a very few of the millions of short-term visitors to Canada each year are assessed as medically inadmissible.

Officers can have access to a health specialist by dialing during normal working hours 8:30 to 4:30 weekdays (613) 957-8739 and after hours 4:30 to 8:30 or weekends (613) 791-1027.

Visitors living with HIV/AIDS and the excessive demands criteria

It is departmental policy that persons living with HIV/AIDS do not generally represent a danger to public health pursuant to A19(1)(a)(i). Therefore, a visitor living with HIV/AIDS seeking entry to Canada would not, in the absence of contrary evidence, usually be inadmissible pursuant to A19(1)(a)(i). An immigration officer would rarely request a medical examination of a visitor living with HIV/AIDS based on danger to public health or safety. However, persons living with HIV/AIDS will be medically inadmissible if they have an associated medical condition that is considered a public health risk, eg. active tuberculosis.

Our main concern is with respect to the excessive demands on health or social services. In the case of visitors to Canada, we would not normally expect that there would be any demand on the health care system. In most circumstances, this would also be the case for persons living with HIV/AIDS. It is therefore departmental policy that a diagnosis of HIV/AIDS is not in itself a barrier to visiting Canada. For the vast majority of short-term visits by persons living with HIV/AIDS, the excessive demand criterion would not likely be invoked. If the excessive demand criterion is invoked it will be in circumstances where there is a reason to believe that the visitor will need some form of medical treatment while in Canada. Our primary responsibility in this area is to ensure that visitors do not place a burden on our health system due to hospital treatment. Therefore, when making a determination, officers should be asking themselves if it is likely that the person will require hospitalization during their visit. It is a risk management exercise.

When dealing with a visitor living with HIV/AIDS, the same line of questioning and determining criteria mentioned above, are used. If the visitor does not appear obviously ill, then it is not an issue. If the visitor is obviously very ill, IOs should get the information needed to determine the likelihood of hospitalization during his or her visit and the arrangements which have been made, and if required, contact CIC Health Programs Division. If you follow the line of questioning mentioned above, there will be no need to ask a visitor if he is living with HIV/AIDS. The carrying of medication used in the treatment of HIV/AIDS is not grounds for refusing admission.

It would be rare that a visitor living with HIV/AIDS would need to be referred to an Immigration medical examination and rarer still that such a person would be assessed as medically inadmissible.

8. RECIPROCAL ARRANGEMENT BETWEEN CANADA AND THE U.S.

8.1 Persons being removed from the U.S. to Canada

Under the *Reciprocal Arrangement between the Canada Employment and Immigration Commission and the United States Immigration and Naturalization Service, Department of Justice for the Exchange of Deportees between the United States of America and Canada* (the Reciprocal Arrangement), advance written notice of the return of any deportee must be provided to Canada where the U.S. has evidence to suggest that medical attention is required because of a mental or physical condition. This includes citizens, permanent resident aliens and non-resident aliens.

Subject to this provision of the Reciprocal Arrangement, the following classes of persons may be returned to Canada from the U.S. without a letter of consent:

- a) **persons authorized to depart voluntarily:** a person who is authorized by the USINS to depart the U.S. before the commencement of deportation proceedings or after a deportation hearing (see APPENDIX L, Parts 5. and 10.)
- b) **Canadian citizens:** in the case of a Canadian citizen, verbal notice of the deportee's return to Canada will be accepted if:
 - citizenship can be satisfactorily established through presentation of a birth or baptismal certificate, a certificate of Canadian citizenship, a valid or expired passport, or verifiable evidence of citizenship, and
 - the deportee does not require institutional care or treatment because of a mental or physical condition.

In the case of Canadian citizens who require medical care, written notice of the deportee's return must be accompanied by a written opinion of a competent authority (that is, a medical doctor or an official of a medical institution) confirming the need for care or treatment. The advance written notice will provide Canadian immigration officials with a description of the facts and circumstances of the case. At the same time as notice is given, or as soon as possible thereafter, the U.S. will notify Canada of the deportee's travel arrangements.

If a citizen of Canada requires institutional care or treatment because of a mental or physical condition, or where evidence of citizenship cannot be satisfactorily established through documentation as indicated above, written notice of the deportee's return to Canada must be provided by the USINS to the Director of Immigration in the region where the port of return is located.

The USINS provides notices (written or verbal, as appropriate) regarding the removal of Canadian citizens to the Director, Immigration at the appropriate region responsible for:

- the area of the deportee's destination in cases involving special arrangements for reception (that is, deportees in need of medical care or institutionalization), and
- the POE at which the deportee is to arrive in Canada in those cases where no special arrangements for reception are necessary.

On receipt of notification, regions will verify the birth in Canada or that the person has acquired Canadian citizenship. In cases of persons needing care upon arrival, the acceptance of responsibility for such care by relatives, other persons or institutions will be verified.

- c) **permanent residents:** a permanent resident of Canada who entered the U.S. directly from Canada and who was paroled into the U.S. will be permitted to return to Canada provided written notice of the grant of parole is given to the manager of the Canadian POE opposite the U.S. port at which parole was granted immediately after the grant of parole, and provided verbal notice is given to the manager of the Canadian POE opposite the U.S. port of exit within one year of the revocation or expiration of parole or from the date of a final removal order, whichever is the later.

At the time that a letter of consent is sought from Canada, advance written notice as described in the section on citizens above will be provided.

The grant of consent in the cases of permanent residents will not be withheld because of a deportee's mental or physical condition.

8.2 Content of notices

Where either written or verbal notice is required, the notice must include sufficient identifying and biographic information to establish that the deportee is returnable under the terms of the Reciprocal Arrangement.

8.3 Verification of birth

Both U.S. and Canadian immigration services have agreed that they will accept telegraphic verification of birth in lieu of an actual copy of the birth certificate as evidence of citizenship.

8.4 Letters of consent

National Headquarters issues letters of consent on behalf of:

- a) permanent residents of Canada, provided that:
- the person has not abandoned permanent residence by residing in a third country, and
 - the person proceeded directly from Canada to the U.S. and was not admitted to the U.S. for permanent residence at that time, and
 - formal request for consent to return the person is made within one year from the date of a final order of deportation, and
 - the person came into the U.S. on or after August 1, 1949
- b) non-residents of Canada, provided that:
- the person was denied admission at a POE and was ordered removed from the U.S., and
 - the person proceeded directly from Canada to the U.S., and
 - formal request for consent to return the person is made within one year from the date of a final removal order, and
 - in the case of a non-resident who requires medical evaluation or institutional care or treatment, appropriate arrangements for reception in Canada are made.

8.5 Persons of interest to law-enforcement authorities in Canada

Where the USINS is aware that a deportee is or may be of interest to Canadian law-enforcement authorities, the USINS will provide advance notice of the relevant facts and circumstances of the case, including travel arrangements, with notice of the deportee's return or with the request for consent to return the deportee. The purpose of providing this information in advance of actual removal is to allow Canadian POE officials sufficient opportunity to ensure that appropriate procedures are in place to facilitate the transfer of the deportee at the POE, and to take precautionary measures to ensure the safety and security of the public and officials where necessary.

8.6 Issuing a Minister's permit

For the purposes of the Reciprocal Arrangement, issuing a Minister's permit in circumstances warranting special consideration equates to the discretionary grant of parole as provided for in U.S. immigration law for emergent reasons or for reasons deemed strictly in the public interest.

8.7 Admission on humanitarian or compassionate grounds or for reasons of national interest

If a person seeks to come into Canada directly from the U.S. and is found to be inadmissible, it may nonetheless be desirable to allow the person forward on humanitarian or compassionate grounds or for reasons of national interest.

While SIOs do have authority to grant an inadmissible person discretionary entry under A19(3), it is important to note that the grant of any form of entry does not afford Canada any protection whatsoever under the terms of the Reciprocal Arrangement if removal action against the person becomes necessary at some future date. Issuing a Minister's permit in appropriate circumstances does, however, ensure that Canada's interests are protected should there be any doubt that the person concerned will voluntarily leave Canada as required, providing:

- a written Notice of Issuance of Minister's Permit (IMM 1443; see APPENDIX M) is given to the official in charge of the opposite U.S. port immediately after the permit is issued, and
- verbal notice of the person's return is given to the U.S. within one year of revocation or expiry of the Minister's permit or from the date of a final order of deportation, whichever is the later.

8.8 Notice provided by the USINS

To ensure Canada's acceptance of a deportee who is not a Canadian citizen and who was allowed into the U.S. under parole, the responsible USINS official must provide written notice of the grant of parole immediately to the manager of the opposite Canadian POE, and must give verbal notice of the person's return to Canada within one year of the revocation or expiry of parole or from the date of a final order of deportation, whichever is the later.

8.9 Persons authorized by the IAD to return to Canada under A75

8.9.1 Persons with an appeal before the IAD

Persons residing or sojourning in the U.S. who are under a removal order made as a result of a report under A20(1) and who enter an appeal to the IAD will be removed from Canada [A49(1.1)] to await the disposition of the appeal in the U.S. Such persons and those who decide to return to the U.S. on their own before an appeal may apply to the IAD to return to Canada to attend their appeal hearings [A75].

8.9.2 U.S. alien residents

If the IAD has authorized the return of an alien resident of the U.S. under A75 and the person concerned seeks to come into Canada specifically for this purpose, the officer in charge of the opposite U.S. POE must be notified in writing of the facts and circumstances of the case immediately upon the person's arrival. Alien residents of the U.S. will be permitted to return to the U.S. if such written notice is given, if verbal notice is given to the officer in charge of the opposite U.S. port on the alien's departure from Canada at the conclusion of the hearing, and if the person otherwise meets the requirements of paragraphs 3.1 a), b) and d) of the Reciprocal Arrangement (see APPENDIX L).

8.9.3 U.S. aliens who are not permanent residents

An alien who is not a permanent resident of the U.S. and who is authorized to return to Canada under A75 will be permitted to return to the U.S. providing:

- the alien was the subject of an A20(1) report and was ordered removed from Canada on this basis
- the alien came to Canada directly from the U.S.
- written notice of the facts and circumstances of the case is given to the officer in charge of the opposite U.S. port immediately on the person's arrival in Canada, and
- verbal notice is given to the officer in charge of the opposite U.S. port on the alien's departure from Canada at the conclusion of the hearing.

8.10 Transportation and subsistence

The U.S. is responsible for covering transportation and subsistence costs on behalf of a deportee only to the POE in Canada that is nearest the port of exit in the U.S. if the deportee has the financial means to travel to his last place of residence at his or her own expense.

If a deportee is destitute and is clearly unable to finance his or her own travel to the last place of residence in Canada, the U.S. is then responsible for paying transportation and subsistence costs to the person's last place of residence.

In exceptional cases, consideration may be given to providing a deportee with transportation and subsistence either beyond the border or to a place other than that at which the deportee last resided in Canada. Consideration will normally be given in those circumstances where humanitarian and compassionate factors (such as the mental or physical

condition of the deportee, the presence of supportive family members or required social services) make the choice of destination more appropriate than the last place of residence. The destination in cases meriting this exceptional treatment may either be closer or more distant than the person's last place of residence. In all such cases, however, the choice of final destination must be acceptable to both the U.S. and Canada.

If a transportation company is liable to carry a deportee, the person concerned will be carried to such place as is required by law [A85].

8.11 Voluntary departure

Persons granted voluntary departure as defined in Part 10. of the Reciprocal Arrangement are not governed by the terms of the arrangement. For the purposes of the arrangement, such persons are not deportees and are not, therefore, subject to any of the consent and notice requirements.

For the purposes of the Reciprocal Arrangement only, the definition of the term "voluntary departure" has been broadened to include situations in Canada where:

- a removal order has been made
- a departure order has been issued, or
- a direction for inquiry has been issued, or where the person has been arrested for inquiry but has been granted permission to leave before the inquiry's is completed.

8.12 Persons being extradited from the U.S. to Canada

To ensure that Canada's interests are protected under the terms of the Reciprocal Arrangement, particularly if removal of a U.S. permanent resident becomes necessary, you must examine all persons coming to Canada under extradition proceedings. Give particular attention to extradited U.S. permanent resident aliens, because under U.S. immigration law such persons would not have an automatic right to return to the U.S.

Those persons you find to be inadmissible will be issued Minister's permits. This procedure ensures that the persons are returnable to the U.S. under the Reciprocal Arrangement. The notice provisions described in section 8.7 above apply.

For instructions on dealing with persons who are admissible at the time of extradition, see section 7.8 above.

Since citizens or nationals of the U.S. can be returned to the U.S. without consent, their removal from Canada, if necessary, would not be problematic.

Persons extradited to Canada from the U.S. who are not citizens, nationals or permanent residents of the U.S. will be removed, if necessary, to their own countries.

8.13 Satisfying the admitting officer

National headquarters may issue a letter of consent conditional on the manager at a POE being satisfied as to the authenticity of the documents and the identity of the deportee, when the deportee and documents are presented by USINS officials.

8.14 Accepting deportees at Canadian POEs

On accepting a deportee from the USINS, the officer in charge or someone on his or her behalf will:

- satisfy himself or herself that the deportee may be accepted
- ensure by personal count and inspection that all items for which he or she signs have, in fact, been turned over, and
- sign the appropriate receipts for the USINS.
- When a letter of consent is presented on behalf of a deportee from the U.S., the examining officer will:
 - retrieve the letter
 - affix the port stamp and record on the letter the deportee's destination and details of transportation and subsistence or the amount of money in his or her possession, as appropriate, and
 - mail the letter of consent directly to the issuer for completion of the file, and retain a copy for CIC port file, as appropriate.

8.15 Deportation from the U.S. through Canada to other countries

A person who is deported from the U.S. through Canada to another country is in transit while in Canada. The person must be accompanied to the Canadian port of departure by an escort officer of the USINS. The escort officer is not required if the deportee is carried by aircraft merely stopping at a Canadian airport en route to the third country, or if the deportee is on board a ship en route to a third country. Subsection 90(2) of the Act gives an IO the right to order a person who is not seeking to come into Canada to be detained on board a vehicle. The USINS will provide appropriate advance information. Normal visitor visa requirements must be met by deportees in transit through Canada to a third country.

9. DIPLOMATS AND U.S. GOVERNMENT OFFICIALS

For guidance on granting entry to diplomats and U.S. government officials (for example, USINS officers and U.S. Customs officers), see chapters PE 5, *Examining Students*; PE 6, *Examining Visitors*; and PE 7, *Examining Foreign Workers*.

10. DISEMBARKATION SCREENING

Screening passengers is the rapid verification by immigration officials that passengers possess travel documents. Under A90 you have the right to board and inspect a vehicle, and examine and record documents carried by a person on board a vehicle.

The purpose of screening passengers is not to examine them but rather to identify those persons not in possession of passports or travel documents, and to segregate them from the normal flow of passengers.

Screening also enables you to identify which airline carried any unidentified passengers to Canada. When two international flights arrive within a brief period of time, for example, passengers from each flight may intermingle at the PIL. This situation makes it difficult to determine which carrier brought an improperly documented passenger to Canada.

You should complete the screening quickly and efficiently, so that you do not unduly disrupt the disembarkation of the bona fide travelling public.

10.1 Screening passengers

You should notify Customs, Transport and RCMP officials of the flight you intend to screen, with as much lead time as possible. Your POE manager should also liaise with the applicable airline to alert it to disembarkation screening intended for a particular flight. Experience has shown that the notification should be given to the airline once the flight is en route. This advance notice allows the airline to notify passengers that they must produce their documentation at disembarkation. APPENDIX N suggests wording that airline personnel can use to announce to passengers that screening will take place on landing.

IOs are responsible for screening the documents of disembarking airline passengers. You should conduct the screening on board the aircraft, or at a point as close to the exit as possible, depending on local arrangements. Normally officers will proceed down the aisle, and as passengers are checked they are free to leave the aircraft.

You must make note of the aircraft identification number in your notebook. This is important if you later have to testify in court.

If you discover an undocumented passenger, prepare a Confirmation of Passengers Carried form (IMM 1445) at the earliest opportunity, either when you discover the undocumented passenger during disembarkation screening, or when the undocumented passenger has been escorted through the PIL to the immigration examining area. Have the local airline representative sign the form. If the airline representative refuses to sign the form, note that fact accordingly.

Since passengers normally have documents at the time of boarding, it is likely that an undocumented passenger has hidden or destroyed his or her documents en route. Present the undocumented passenger to the PIL for completion of Customs' formalities, and then escort the passenger to the immigration examining area for complete examination.

If you discover an improperly documented person during a secondary examination, complete the same IMM 1445 form.

10.2 Operational principles

To ensure that the travelling public is not unduly delayed, the POE manager should normally assign at least six officers to screen passengers.

While you should involve all carriers in disembarkation screening, you may more frequently target carriers with a history of carrying undocumented passengers.

It is essential that the carriers understand and support the screening program. The POE manager should write a letter to local airline managers, telling them of the department's intentions. APPENDIX O includes a sample letter introducing the screening program, emphasizing its importance, and describing other aspects of the legislation.

You should fully consult Customs and Department of Transport officials and airline representatives at the POE to obtain their co-operation and to ensure that there is no serious disruption of normal operations.

Local officials should consult Customs, the Department of Transport and the RCMP on developing any changes to operational procedures for disembarkation screening.

Regional officials should consult Customs, the Department of Transport and the airlines when regions are developing procedures that take into consideration the configuration of local facilities.

For audit purposes, POEs must keep a record of the flights where screening took place. The record must reflect the reason the flights were selected and the number of undocumented passengers identified.

APPENDIX A

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF NATIONAL REVENUE, CUSTOMS AND EXCISE AND THE CANADA EMPLOYMENT AND IMMIGRATION COMMISSION

This formal agreement establishes the administrative and operational responsibilities of the Department of National Revenue — Customs and Excise, hereinafter referred to as Customs and the Canada Employment and Immigration Commission, hereinafter referred to as Immigration, with respect to the examination and admission of persons seeking entry into Canada.

Preamble

Section 110(2) of the Immigration Act empowers the Minister of Employment and Immigration to designate any person or class of person as an Immigration Officer. The Minister has exercised his authority in this regard through Instrument I-13 of the Immigration Manual, which enumerates those persons who, pursuant to Section 110(2) of the Act, are delegated to perform the duties and functions of an Immigration Officer. Included in this list are all Customs Officers stationed at any place designated by the Minister as a port of entry. The ports of entry have been named by the Minister pursuant to Section 116(b) of the Immigration Act, and are set down in Instrument I-19 of the Immigration Manual.

The ports of entry staffed by Immigration are determined by the nature and volume of international trans-border traffic at each location. Any decision by Immigration to change the level of service offered by Immigration at a particular port of entry will include prior consultation between Immigration and Customs officials at the regional level.

Mutual feedback with respect to perceived operational problems and accomplishments is encouraged and indeed is considered essential if this agreement is to be effective.

Principle

The Immigration Act and Regulations set out the criteria for the examination of persons seeking to come into Canada. Whereas the Canada Employment and Immigration Commission is responsible for the administration of this legislation and the establishment of requisite operating policies and guidelines, all Immigration Officers appointed or designated by the Minister of Employment and Immigration shall conduct their examinations of persons seeking to come into Canada in accordance with such legislation, policies and guidelines.

Each department will pay the salaries of its officers and all related expenses in carrying out the duties contained in this agreement.

Article 1

Customs will carry out the following functions on behalf of Immigration:

- questioning of travellers and review of documentation in order to determine admissibility;
- the determination of whether persons seeking entry into Canada are or are not immigrants;
- admission of persons into Canada, stamping of passports when required and ascribing length of stay when required;
- referral of travellers, when appropriate, for a more detailed Immigration examination;
- the validation of crew lists presented by the masters of vessels arriving in Canada; at agreed locations, activities and documentation relating to ship deserters will also be undertaken;
- completion of certain specified student authorizations, employment authorizations and other control documents and preparation of such documents when required;
- completion of Canadian Immigration forms 1000 as and when required;
- remplir, au besoin, les fiches d'Immigration Canada (Immigration 1000);
- the furnishing of Immigration related intelligence to other appropriate points of entry in a timely manner;
- fournir à temps les renseignements ayant trait à l'Immigration aux autres bureaux d'entrée appropriés;

- the completion of voluntary withdrawal forms;
- the completion, serving and cancellation of rejection orders on an “as required” basis;
- the forwarding of completed or partially completed documentation, on a timely basis, to the closest CIC.

Article 2

The extent of Immigration responsibilities to be carried out by Customs personnel is dependent on the level of coverage afforded each point of entry by Immigration as reflected in Appendix B of this agreement.

Article 3

At locations where Immigration personnel is not on-site, Customs will undertake to prepare or complete control documentation in straightforward cases. In situations where the matter is more complex, or the admissibility of a traveller can only be ascertained by an extensive interview, an Immigration official will be contacted. Where necessary, arrangements will be made to have the admission interview conducted by the appropriate Immigration official.

Article 4

Immigration will provide advice, functional direction and guidance to Customs Inspectors on all problems and questions relating to Immigration law, policy and regulations.

Article 5

Immigration is responsible for the development and maintenance of an appropriate data base of Immigration lookout information for the PIL Information System. Customs is responsible for making effective use of the immigration information provided for support of the PIL line operation. The design and implementation of changes to the PIL Information System will be the subject of consultation and negotiation between the two departments.

Article 6

Immigration is responsible for the publication and distribution of information and directives to Customs on Immigration matters. It is recognized that urgent situations (e.g., lookouts) may require immediate referral to local Customs management by Immigration but, in all other situations, Customs will be given the opportunity to review the directives prior to their being issued.

Article 7

Customs will not place any employee (full-time, part-time, or casual) in any position where Immigration duties will be performed, until training designed to meet Immigration requirements has been completed.

Article 8

Training will be designed to satisfy a Customs Inspector's need to know, thus those officers expected to deliver a wider range of Immigration duties will receive more intensive training than others.

Article 9

Immigration is responsible for designing the Immigration training material and providing instruction to Customs Inspectors as required. Immigration will consult with Customs in areas of methodology delivery and course structure. Customs may propose additions or deletions to the course material prior to its dissemination to Customs Inspectors. Customs will provide course evaluations to Immigration upon completion of each course, where requested.

Article 10

Customs will advise Immigration of all training requirements, including maintenance training and skills upgrading. All inspectors assigned to traveller processing should receive maintenance and skills upgrading training at least every three years, subject to operational requirements. Immigration will provide the required training within six weeks of the request having been received, or at such time as is actually convenient to both parties.

Article 11

Each department will identify and assign regional Customs/Immigration training coordinators who will consult with each other regarding training matters and also the coordination of training sessions. Training will be given to Customs Inspectors at the Customs and Excise College or at a local site, depending on

available training and manpower resources and the local determined to be most appropriate and feasible. Every effort will be made to integrate Immigration training with the normal training program for Customs Inspectors.

Liaison and Cooperation

Article 12

Should either department contemplate changes in operational policies or procedures which would impact on the operations of the other, the proposed changes will be subject to consultation between both departments.

Article 13

Both parties will establish and distribute to the other, lists of contacts and telecommunication channels for all levels of their organization. Lines of communication must be established in such a way as to ensure that inspectors have ready access to appropriate personnel of the other department for consultation and advice.

Implementation/Monitoring

Article 14

A committee shall be formed and charged with the responsibility for negotiating with, and providing functional and interpretative guidance to, all parties affected by the implementation of this agreement. Representatives of both agencies, delegated by and under the direction of the committee, shall oversee the implementation of the agreement and review and monitor adherence to its provisions immediately following the target date for implementation, and on a semi-annual basis thereafter. This committee will be composed of representatives of both agencies as outlined below, and other parties deemed to be appropriate, subject to mutual agreement.

- (1) Director
Program and Liaison Directorate
Enforcement Branch
CEIC
- (2) Director
Passenger Programs
Customs Programs Branch
Revenue Canada
- (3) Director
Field Liaison
Field Operations Branch
Revenue Canada
- (4) Director
Program Coordination
Priorities and Program
Coordination Branch
CEIC

Article 15

Immigration will develop a performance measurement system designed to determine the effectiveness and efficiency of the passenger processing system in so far as it relates to Immigration matters. The performance indicators to be employed for this purpose, together with the criteria upon which they are based, must be mutually acceptable to both parties. Immigration will be the operator of this system and performance measurement reports will be shared by both parties.

Article 16

This Memorandum of Understanding may be amended by mutual agreement. Whenever possible, the party wishing to make an amendment will advise the other party at least sixty days prior to the date on which it is proposed the amendment be effective in order that there can be full consultation respecting the issues raised.

Effective Date

This Memorandum of Understanding will come into effect within thirty days from the date on which it is signed.

Implementation Date

The implementation phase will be concluded and the provisions of the agreement thereby in force, no later than eighteen months from the effective date of this agreement.

In Witness Whereof, the parties hereto cause this agreement to be executed by the proper officers and officials.



- (1) By:
Title: The Deputy Minister
Department: National Revenue for
Customs and Excise
Date: 18.10.83



- (2) By:
Title: Deputy Minister/
Chairman
Department: Canada Employment and
Immigration Commission
Date: 18.10.83

APPENDIX B

IMMIGRATION SECONDARY REFERRAL LIST

Category and Type of Persons to be Referred	Reason for Referral
1. General	1. General
a) Persons considered to come within the inadmissible classes in A19(1) or (2) of the Immigration Act, 1976.	a) To determine admissibility.
b) Persons whose citizenship or permanent resident status is doubtful based on questioning and documentation submitted.	b) To determine right to come into Canada.
c) Persons whose admissibility cannot be determined because, for reasons other than a lack of knowledge of English, French or any other language, they are unable, or refuse, to answer questions.	c) To determine admissibility or whether rejection order should be issued.
d) Persons who have been refused admission to the U. S. A. or to another country.	d) To determine admissibility.
2. Canadian Citizens	2. Canadian Citizens
a) Persons coming forward for the first time when born abroad before February 15, 1977, or those persons born after February 14, 1977, and not in possession of documentary evidence of citizenship.	a) If the child's birth is not registered, he is not a Canadian citizen. The child is issued a Minister's Permit and parents are counselled regarding citizenship procedures.
b) Persons in possession of an Emergency Passport issued by a Canadian Embassy official abroad to facilitate their return to Canada.	b) These documents are to be surrendered at port of entry and forwarded to External Affairs.
c) Persons who are deported or extradited from another country.	c) To establish Canadian citizenship and perhaps complete instructions in b) above.
3. Permanent Residents	3. Permanent Residents
a) Persons who have presented proof of landing in Canada, but are unable to provide documentary evidence that they are the person described in the landing document.	a) To establish the bona fides of the document through a routine FOSS check.
b) Where the person has been away for more than 183 days in any 12-month period and is not in possession of a valid Returning Resident Permit.	b) To determine if the person falls within A24(1) or (2).
c) Persons who are deported or extradited to Canada from any country.	c) To verify claim to permanent residence.
4. Immigrants	4. Immigrants
Any person who seeks permanent resident status, whether in possession of documentation or not.	To complete documentation and determine admissibility.
5. Visitors	5. Visitors
a) Persons intending to remain more than six months.	a) To complete documentation.
b) Persons who are citizens of countries whose referral has been requested by Immigration.	b) To determine if passport is genuine.
c) Seamen coming forward to join the crew of a ship.	c) To complete documentation.
d) Persons claiming refugee status or political asylum.	d) To conduct detailed examination, taking of examination under oath.

Category and Type of Persons to be Referred	Reason for Referral
e) Persons coming forward to seek or undergo medical treatment.	e) To conduct detailed examination – verification required.
f) Persons transiting through Canada while under escort.	f) To conduct detailed examination, complete documentation, possibly set of terms and conditions.
g) Persons being extradited to Canada or those coming forward to attend trial, whether escorted or not.	g) To conduct detailed examination, complete documentation, possibly set of terms and conditions.
h) U. S. visa seekers.	h) To conduct detailed examination and complete documentation.
i) Young children, accompanied or alone, who arouse concern about the purpose of their trip to Canada or their welfare while in Canada.	i) To conduct detailed examination and complete documentation.
j) Persons who are under docket control or who are otherwise in difficulty with USINS.	j) To conduct detailed examination.
k) Persons in possession of Emergency Travel Documents.	k) To conduct detailed examination.
l) Persons whose arrival has been requested to be made known to Immigration.	l) To take action as required by need to know.
m) Persons intending to seek or take employment.	m) To complete documentation and verify necessary authorization.
n) Persons intending to follow any course of study.	n) To complete documentation and verify necessary authorization.
o) after-sale services personnel under the NAFTA.	o) To conduct detailed examination – verification of citizenship and pertinent documentation.
6. Minister's Permits	6. Minister's Permits
Permit holders who are making their first arrival in Canada; or whom there is some doubt as to identity; or whose permit does not entitle them to re-enter Canada.	To conduct detailed examination – verification of Minister's Permit.

APPENDIX C
SAMPLE OF FORM E 311 – REVENUE CANADA, CUSTOMS, EXCISE AND TAXATION

CREW IMM F R

Answers to the questions listed below will be used for Customs control purposes and to compile statistical data.

To be completed by all travellers																							
Family Name or Last Name _____	First Name and Initials _____	<div style="text-align: center;">D M Y</div> <div style="text-align: center;"> </div> Date of Birth _____																					
Address — Number, Street _____		Postal Code _____																					
City, Town _____	Province – State _____	COUNTRY _____																					
ARRIVING BY (indicate mode):																							
<input type="checkbox"/> Air _____ <input type="checkbox"/> Marine <input type="checkbox"/> Rail <input type="checkbox"/> Bus <div style="display: flex; justify-content: space-around; font-size: small;"> Name of Airline _____ Flight No. _____ </div>																							
ARRIVING FROM (check one):																							
<input type="checkbox"/> U.S.A. Only (including Hawaii) <input type="checkbox"/> Other Country Direct <input type="checkbox"/> Other Country via U.S.A.																							
LIST LAST 3 COUNTRIES VISITED ON THIS TRIP (other than U.S.A.):																							
_____ _____ _____																							
PRIMARY PURPOSE OF TRAVEL: <input type="checkbox"/> Pleasure <input type="checkbox"/> Business																							
– I am bringing into Canada: <table style="width: 100%; border: none;"> <thead> <tr> <th style="width: 80%;"></th> <th style="width: 10%; text-align: center;">YES</th> <th style="width: 10%; text-align: center;">NO</th> </tr> </thead> <tbody> <tr> <td>• Goods which exceed the values/quantities of my personal exemption, including gifts (refer to information sheet);</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>• Goods such as firearms or other weapons; articles made or derived from endangered species;</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>• Business material, professional goods, commercial goods, goods for resale, samples, tools, equipment;</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>• Animals, birds, meats, any food containing meat, dairy products, eggs;</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>• Plants, cuttings, grapevines, vegetables, fruits, seeds, nuts, bulbs, roots, soil.</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>– I will be visiting a farm in Canada within the next 14 days.</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table>				YES	NO	• Goods which exceed the values/quantities of my personal exemption, including gifts (refer to information sheet);	<input type="checkbox"/>	<input type="checkbox"/>	• Goods such as firearms or other weapons; articles made or derived from endangered species;	<input type="checkbox"/>	<input type="checkbox"/>	• Business material, professional goods, commercial goods, goods for resale, samples, tools, equipment;	<input type="checkbox"/>	<input type="checkbox"/>	• Animals, birds, meats, any food containing meat, dairy products, eggs;	<input type="checkbox"/>	<input type="checkbox"/>	• Plants, cuttings, grapevines, vegetables, fruits, seeds, nuts, bulbs, roots, soil.	<input type="checkbox"/>	<input type="checkbox"/>	– I will be visiting a farm in Canada within the next 14 days.	<input type="checkbox"/>	<input type="checkbox"/>
	YES	NO																					
• Goods which exceed the values/quantities of my personal exemption, including gifts (refer to information sheet);	<input type="checkbox"/>	<input type="checkbox"/>																					
• Goods such as firearms or other weapons; articles made or derived from endangered species;	<input type="checkbox"/>	<input type="checkbox"/>																					
• Business material, professional goods, commercial goods, goods for resale, samples, tools, equipment;	<input type="checkbox"/>	<input type="checkbox"/>																					
• Animals, birds, meats, any food containing meat, dairy products, eggs;	<input type="checkbox"/>	<input type="checkbox"/>																					
• Plants, cuttings, grapevines, vegetables, fruits, seeds, nuts, bulbs, roots, soil.	<input type="checkbox"/>	<input type="checkbox"/>																					
– I will be visiting a farm in Canada within the next 14 days.	<input type="checkbox"/>	<input type="checkbox"/>																					

To be completed only by residents of Canada	
I left Canada on _____ and the total value of all the goods that I am bringing into Canada which were purchased, received or acquired in any manner while outside the country, and at Duty Free Stores is:	<div style="text-align: center;">D M Y</div> <div style="text-align: center;"> </div> \$ _____ Value in Cdn. funds
– I have goods to follow at a later date valued at:	\$ _____ Value in Cdn. funds
– I qualify for and wish to claim a personal exemption of goods valued at:	
<input type="checkbox"/> \$20.00 Cdn. funds <input type="checkbox"/> \$100.00 Cdn. funds <input type="checkbox"/> \$300.00 Cdn. funds	

E 311 (2/90)

Signature of Traveller

550

APPENDIX D

REVENUE CANADA, CUSTOMS, EXCISE AND TAXATION INSTRUCTIONS FOR QUESTIONING PERSONS SEEKING TO COME INTO CANADA

Air and Land Borders

1. BACKGROUND

Over the past years the Primary Inspection Line (PIL) system has become the subject of two reviews, one by the office of the Auditor General in 1990, and the other an evaluation conducted on behalf of Immigration in 1991. Both of these reviews were designed to examine the Immigration component of the PIL system. The comments generated have raised concerns regarding the effectiveness of the basic questioning we carry out at the PIL.

One of the cornerstones to resolving this problem will be to manage the PIL in a more effective manner and return to a set of standard questions. It is recognized that daily and seasonal fluctuations in traffic patterns often affect the amount of time that a Customs inspector has for examining travellers and decision-making at the PIL. The following questioning sequences have been developed to ensure an effective level of control for Immigration and Customs purposes during peak and non-peak traffic periods.

This structured approach involves two levels of questioning:

level I represents the questions that will be asked during normal or average traffic periods, or in any situation where a traveller is to be referred to secondary.

level II represents the minimum number of questions to be asked during peak volume periods.

In addition, if the inspector feels the need to clarify a traveller's declaration in either level, there may be a requirement to ask supplementary questions.

Questioning styles such as "Anything back?" or "Where to today?", although speedy, will be avoided. The structured format style of questioning is being introduced to detect Immigration referrals better, and to maintain an acceptable level of control for Customs purposes.

2. LAND BORDERS

2.1 Questions for non-residents

- a) What is your citizenship?
- b) Where do you live? *or* Where do you make your permanent home?
- c) What is the purpose of your trip?

Note: For Immigration purposes there is no difference in the questions asked at a level I or II examination

2.2 Questions for returning residents (level I)

- a) What is your citizenship?
- b) Where do you live? *or* Where do you make your permanent home?

Note: *Note:* For Immigration purposes there is no difference in the questions asked at a level I or II examination

3. AIR

3.1 The E 311 travellers declaration card

The E 311 card was intended to facilitate travellers by allowing them to make their declaration in writing before arriving at the PIL. Although many of the level I questions have been answered through the card, it remains necessary for the inspector to ensure the completeness of the responses and ascertain the

immigration status of the traveller. It is important to note that the questions responded to on the card should not be repeated. This should not, however, discourage officers from asking additional questions to clarify the declaration or in situations where indicators warrant a more in-depth interview.

3.2 Questions for non-residents with an E 311.

3.2.1. Mandatory questions

- a) You are a citizen of what country? *or* What is your citizenship?
- b) How long do you plan on staying in Canada?

3.2.2 Supplementary questions

Inspectors are still encouraged to use their discretion in asking supplementary questions when and where appropriate. Normally this will be in situations requiring the clarification of a traveller's declaration or possibly the traveller's identity. Examples of these questions are:

- a) What is your name? (only in situations where the name is not indicated on the card, or where there may be some questions as to the person's identity)
- b) How long do you intend on staying in Canada?
- c) Do you intend to be employed, or seek employment in Canada?

Travellers may be asked to produce identification or documentation for Customs or Immigration purposes. Examples of such situations may include lookout purposes, questions concerning the person's identity, and (in the case of minor children) when there may be some questions as to the legal care-giver.

3.3 Questions for residents of Canada with an E 311

- a) What is your citizenship? (It is not necessary to ask where the person resides or the person's name if it is indicated on the E 311. In a case where a person states that he or she is a citizen of another country but the E 311 indicates a Canadian place of residence, the person's Immigration status should be confirmed by reviewing applicable documentation and asking the next question.)
- b) What is your status in Canada?

SAMPLE OF FORM E 67 (6/86) – REVENUE CANADA, CUSTOMS, EXCISE AND TAXATION

E 67 (8/88)

APPENDIX F

SAMPLE OF IMM 5063 (3-94) B – NOTICE OF ADJOURNMENT OR DEFERRAL OF EXAMINATION
UNDER THE IMMIGRATION ACT

Citizenship and Immigration Canada

Citoyenneté et Immigration Canada

NOTICE OF ADJOURNMENT OR DEFERRAL OF EXAMINATION UNDER THE IMMIGRATION ACT
AVIS D'AJOURNEMENT OU DE REPORT DE L'INTERROGATOIRE EN APPLICATION DE LA LOI SUR L'IMMIGRATION

SURNAME - NOM DE FAMILLE	GIVEN NAME(S) - PRÉNOM(S)	FILE NO. - N° DE DOSSIER	CLIENT ID - ID DU CLIENT
DATE OF BIRTH DATE DE NAISSANCE	D - J M Y - A	COUNTRY OF BIRTH - PAYS DE NAISSANCE	COUNTRY OF CITIZENSHIP - PAYS DE CITOYENNETÉ
ADDRESS IN CANADA - ADRESSE AU CANADA			

Pursuant to paragraph 12 (3) (a) of the Immigration Act, your examination is hereby adjourned. Please report for the continuation of your examination as specified below.

☐ En application de l'alinéa 12(3)a) de la Loi sur l'immigration, votre interrogatoire est, par les présentes, ajourné. Veuillez vous présenter aux date, heure et endroit précisés ci-dessous pour la suite de votre interrogatoire.

Pursuant to paragraph 13 (1) (a) of the Immigration Act, your examination is hereby deferred. Please report for your examination as specified below.

☐ En application de l'alinéa 13(1)a) de la Loi sur l'immigration, votre interrogatoire est, par les présentes, reporté. Veuillez vous présenter à votre interrogatoire aux date, heure et endroit précisés ci-dessous.

DATE	D - J M Y - A	TIME - HEURE	LOCATION - ENDROIT
------	---------------	--------------	--------------------

NOTE: Failure to present yourself as indicated above, may lead to the issuance of a warrant for your arrest and the making of a removal order against you.

NOTA: Si vous ne vous présentez pas comme il est indiqué ci-dessous, vous pourriez faire l'objet d'un mandat d'arrestation et d'une mesure de renvoi.

I have read and understand the contents of this form.

J'ai lu le présent formulaire et j'en comprends le contenu.

SIGNED
SIGNÉ

IMMIGRATION OFFICER
AGENT D'IMMIGRATION

I, _____
solemnly declare that I have faithfully and accurately interpreted in the _____ language
the information provided above. I make this solemn declaration
conscientiously believing it to be true, and knowing that it is of the same
force and effect as if made under oath.

Je, _____ déclare
solennellement avoir interprété fidèlement et exactement en _____
les renseignements fournis ci-dessus.
Je fais cette déclaration solennelle croyant en conscience qu'elle est vraie
et sachant qu'elle a la même force et les mêmes effets que si elle avait été
faite sous serment.

.....
SIGNATURE OF PERSON MAKING DECLARATION
SIGNATURE DU DÉCLARANT

Declared before me _____ at _____ this
Déclare devant moi _____ à _____ ce
day of _____ 19 _____
jour de _____

.....
SIGNATURE OF AUTHORIZED OFFICER
SIGNATURE DE L'AGENT

THE INFORMATION PROVIDED ON THIS FORM IS COLLECTED UNDER THE AUTHORITY OF THE IMMIGRATION ACT. THIS FORM INFORMS YOU OF THE ADJOURNMENT/DEFERRAL OF YOUR EXAMINATION AND OF THE CONSEQUENCES TO YOU IF YOU FAIL TO COMPLY. THIS INFORMATION IS STORED IN PERSONAL INFORMATION BANKS EIC PPU OR EIC PPU 295. YOU HAVE THE RIGHT OF ACCESS TO IT AND TO ITS PROTECTION UNDER THE PRIVACY ACT.

LES RENSEIGNEMENTS FOURNIS DANS LE PRÉSENT FORMULAIRE SONT RECUEILLIS EN VERTU DE LA LOI SUR L'IMMIGRATION. CE FORMULAIRE VOUS INFORME DE L'AJOURNEMENT OU DU REPORT DE VOTRE INTERROGATOIRE ET DES CONSÉQUENCES AUXQUELLES VOUS VOUS EXPOSEZ SI VOUS OMETTEZ DE VOUS CONFORMER AUX DIRECTIVES. CES RENSEIGNEMENTS SONT CONSERVÉS DANS LES FICHIERS DE RENSEIGNEMENTS PERSONNELS EIC PPU 225 OU EIC PPU 295. ILS SONT PROTÉGÉS ET VOUS POUVEZ LES CONSULTER EN APPLICATION DE LA LOI SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS.

IMM 5063 (3-94) B

Canada

APPENDIX G
SAMPLE OF IMM 1217 (12-92) B – REJECTION ORDER UNDER SECTION 13 OF THE
IMMIGRATION ACT



Employment and Immigration Canada

Emploi et Immigration Canada

PROTECTED WHEN COMPLETED - A
PROTÉGÉ UNE FOIS REMPLI

**REJECTION ORDER UNDER SECTION 13
OF THE IMMIGRATION ACT**

**MESURE DE REFOULEMENT AUX TERMES DE
L'ARTICLE 13 DE LA LOI SUR L'IMMIGRATION**

FOSS ID - IDENT. SSOBL

FILE NO. - N° DE REFERENCE

TO POUR	SURNAME OF PERSON CONCERNED - NOM DE LA PERSONNE CONCERNÉE	FIRST NAME AND INITIALS - PREMIER PRÉNOM ET INITIALES
ADDRESS - ADRESSE		
DATE OF EXAMINATION - DATE DE L'INTERROGATOIRE	PORT OF ENTRY - POINT D'ENTRÉE	PROVINCE

YOU ARE HEREBY REJECTED UNDER SECTION 13 OF THE IMMIGRATION ACT SEE
PRIVACY STATEMENT ON THE REVERSE OF THIS FORM.

UNE MESURE DE REFOULEMENT EST PAR LES PRÉSENTES RENDUE CONTRE VOUS
AUX TERMES DE L'ARTICLE 13 DE LA LOI SUR L'IMMIGRATION. VOIR AU VERSO DU
PRÉSENT FORMULAIRE L'ÉNONCÉ PORTANT SUR LA PROTECTION DES
RENSEIGNEMENTS PERSONNELS.

SIGNATURE OF IMMIGRATION OFFICER - SIGNATURE DE L'AGENT D'IMMIGRATION

DATE

NOTICE TO TRANSPORTATION COMPANY CONCERNED
(Where applicable)

AVIS AU TRANSPORTEUR CONCERNÉ
(S'il y a lieu)

UNDER THE TERMS OF SECTION 85 OF THE IMMIGRATION ACT, AS AMENDED, YOU
ARE HEREBY ORDERED TO CONVEY, OR CAUSE THE ABOVE-NAMED PERSON TO BE
CONVEYED, TO THE PLACE FROM WHICH THAT PERSON CAME TO CANADA, OR TO
SUCH OTHER COUNTRY AS THE MINISTER MAY APPROVE AT YOUR REQUEST.

EN APPLICATION DE L'ARTICLE 85 DE LA LOI SUR L'IMMIGRATION, TELLE QUE MODIFIÉE,
VOUS ÊTES PAR LES PRÉSENTES ENJOINT DE TRANSPORTER OU DE FAIRE
TRANSPORTER LA PERSONNE PRÉCITÉE À L'ENDROIT D'OU ELLE EST VENUE AU
CANADA, OU À TOUT AUTRE PAYS APProuvé PAR LE MINISTRE À VOTRE DEMANDE.

SIGNATURE OF IMMIGRATION OFFICER - SIGNATURE DE L'AGENT D'IMMIGRATION

DATE

NOTE: For a greater understanding of the obligations of transportation companies under the Immigration Act, write to Immigration HQ, Ottawa, Ontario
K1A 0J9 for a free guide concerning transportation company obligations.

NOTA: Si vous désirez être mieux informé des obligations que doivent remplir les transporteurs aux termes de la Loi sur l'immigration, veuillez
écrire à l'Administration centrale d'Immigration Canada à Ottawa (Ontario) K1A 0J9, pour obtenir sans frais un guide concernant les
obligations des transporteurs.

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

IMM 1217 (12-92) B

PERSON CONCERNED - PERSONNE CONCERNÉE 1

Canada

APPENDIX H
SAMPLE AUTHORIZATION TO ENTER CANADA



Department of Justice Ministère de la Justice
Canada Canada

Ottawa, Canada
K1A 0H8

AUTHORIZATION TO ENTER CANADA

Pursuant to Section 40(1) of the Mutual Legal Assistance in Criminal Matters Act, I hereby authorize _____, a person in the United States, who as a prisoner is a member of an inadmissible class of persons described in Section 19 of the Immigration Act, to come into Canada on October 2, 1991, at Pearson International Airport, (Toronto).

She will go from there in the custody of the Royal Canadian Mounted Police to the Hamilton – Wentworth Detention Centre, 165 Barton Street East, Hamilton, Ontario. There she will be kept in custody, except to the extent she is required to attend, in custody, at the Provincial Court House, 141 Clarence Street, Brampton, Ontario, and other necessary locations to prepare for and provide testimony. She shall remain in Canada from October 2, 1991, until on or before October 7, 1991, at which time she will leave Canada at Pearson International Airport (Toronto).

Canada

APPENDIX I
SAMPLE TRANSFER ORDER

CANADA SUPERIOR COURT OF QUEBEC

(Criminal Division)

PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

NO: 500-36-0000

IN THE MATTER OF THE REQUEST FOR THE TRANSFER OF (D.O.B.) IN VIRTUE OF THE
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ACT

ORDER TRANSFERRING PERSON DETAINED IN CANADA

To:

The Director of the Detention Centre, Montreal Quebec, Constable (name) or any other member of the Royal Canadian Mounted Police,

I have heard the application of, an agent for the Attorney General of Canada and competent authority under the *Mutual Legal Assistance in Criminal Matters Act* for an Order Transferring a Detained Person, to transfer (name) (D.O.B.), a detained person confined at the (name of detention centre), to the United States. I have read the materials accompanying the application.

I am satisfied that the detained person is not a young person under the *Young Offenders Act*.

I am satisfied that the United States has requested the transfer for a fixed period, from (date) to (date)

I am satisfied that (name) consents to the transfer.

The reasons for the transfer are as follows:

In order that (name) plead guilty to one of the outstanding charges against him presently pending before the United States Court, Eastern District of New York, New York State.

In respect of (name) (D.O.B.) a detained person confined at the (name of institution):

I HEREBY ORDER THE FOLLOWING:

(a) that on (date), the Director of the (name of institution), deliver the said (name) to the custody of Constable (name) or any other member of the Royal Canadian Mounted Police;

(b) that constable (name) or any other member of the Royal Canadian Mounted Police deliver the said (name) to representatives of the United States Marshall Service for removal to the United States.

(c) that on the return of the said (name) to Canada, Constable (name) or any other member of the Royal Canadian Mounted Police receive and return him to the (name of institution), and

(d) that the said (name) is to be returned to Canada on or before (date)

Dated at Montreal, Quebec, (date)

Signature of Justice of Superior Court of Quebec

APPENDIX J
COUNTRIES HAVING MUTUAL LEGAL ASSISTANCE AGREEMENTS WITH CANADA

U.S. (in force January 24, 1990); transfer provision

Australia (in force March 14, 1990); transfer provision

Bahamas (in force July 10, 1990)

U.K. (in force August 4, 1990)

Hong Kong (in force February 17, 1991)

France (in force May 1, 1991)

Mexico (in force October 21, 1991); transfer provision

Canada is also a signatory to the United Nations Drug Convention (in force November 11, 1990)

APPENDIX K
REGIONAL CONTACTS FOR *MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ACT* AND
EXTRADITION ACT

Newfoundland

Manager
CIC St. John's
Tel: 709-772-5253

Manager
CIC Gander
Tel: 709-256-6572

Chief
Immigration Operations
Tel: 709-772-2119

Prince Edward Island

Immigration Counsellor
CIC Charlottetown
Tel: 902-566-7737
Fax: 902-566-8355

Alternate:
Director Immigration
Tel: 902-566-7736
Fax: 902-566-8355

Nova Scotia

Chief, Enforcement
Regional Headquarters — CEIC
Tel: 902-426-2905

New Brunswick

CIC Moncton
Tel: 506-851-6780

Regional Headquarters — CEIC
Tel: 506-452-3748

Regional Headquarters — CEIC
Tel: 506-452-3709

Québec

Director
CIC Armstrong
Tel: 418-597-3824

Director
CIC Lacolle
Tel: 514-246-2153

Director
CIC Philipsburg
Tel: 514-246-2411

Director
CIC Rock Island
Tel: 819-876-2774

Director
CIC Québec
Tel: 418-648-3196

Director
CIC Trois-Rivières
Tel: 819-379-6395

Director
CIC Dorval
Tel: 514-636-5983

Director
CIC Mirabel
Tel: 514-476-2866

Program Specialist and contact at Regional
Headquarters for the Québec CICs listed above
Tel: 514-283-4574

Ontario

Program Specialist
Port of Entry Directorate
Tel: 416-954-1306

Manitoba

Manager
Enforcement
Tel: 204-983-3906

Saskatchewan

Case Presenting Officer
Regional Headquarters — CEIC
Tel: 306-780-6181
Fax: 306-780-5275

Regional Chief, Immigration Programs
Regional Headquarters — CEIC
Tel: 306-780-7192
Fax: 306-780-5275

Manager
CIC Regina
Tel: 306-780-5756
Fax: 306-780-6131

Supervisor
CIC Regina
Tel: 306-780-7183
Fax: 306-780-6131

Manager
CIC Saskatoon
Tel: 306-975-4120
Fax: 306-975-4525

Supervisor
CIC Saskatoon
Tel: 306-975-4305
Fax: 306-975-4525

Manager
CIC Prince Albert
Tel: 306-953-8620
Fax: 306-953-8582

Manager
CIC North Portal
Tel: 306-927-2335
Fax: 306-927-2026

Alberta and Northwest Territories

Program Specialist, Enforcement
Regional Headquarters — CEIC
Tel: 403-495-5700

Supervisor of Operations
CIC Calgary Airport
Tel: 403-292-4593

Manager
CIC Coutts
Tel: 403-344-3945

Manager
CIC Carway
Tel: 403-653-3077

Manager
CIC Edmonton Airport
Tel: 403-890-4350

British Columbia and Yukon

Manager
Port of Entry Operations
Tel: 604-666-6481
Fax: 604-666-1927

Manager
CIC Aldergrove
Tel: 604-857-1402
Fax: 604-856-5940

Program Specialist
Port of Entry Operations
Tel: 604-666-0300
Fax: 604-666-1927

Manager
CIC Huntingdon
Tel: 604-853-5945
Fax: 604-850-3577

Manager
CIC Vancouver International Airport
Tel: 604-666-1185
Fax: 604-666-1937

Manager
CIC Kingsgate
Tel: 604-424-5424
Fax: 604-424-5453

Program Coordinator
CIC Vancouver International Airport
Tel: 604-666-1185
Fax: 604-666-1937

Manager
CIC Osoyoos
Tel: 604-495-6545
Fax: 604-495-7774

Acting Manager
CIC Douglas
Tel: 604-536-7671
Fax: 604-536-7674

Manager
CIC Prince Rupert
Tel: 604-627-3040
Fax: 604-627-3041

Program Coordinator
CIC Douglas
Tel: 604-536-7671
Fax: 604-536-7674

Area Manager
Vancouver Island, Yukon and B.C. Interior
CIC Victoria
Tel: 604-363-3627
Fax: 604-363-3669

APPENDIX L

THE RECIPROCAL ARRANGEMENT BETWEEN THE CANADA EMPLOYMENT AND IMMIGRATION COMMISSION AND THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE FOR THE EXCHANGE OF DEPORTEES BETWEEN CANADA AND THE UNITED STATES OF AMERICA

1. REQUESTS AND NOTIFICATIONS:

To provide for the orderly and expeditious return of deportees under this Arrangement between the Immigration Services of Canada and the United States, the Service of the deporting country will transmit to the administrative head of the other Service, or a designated representative, the following:

- a) A notice of return or a request for consent to return the deportee as specified in Parts 2. and 3. of this Arrangement containing such identifying and biographical information as may be necessary to establish that the deportee is returnable under the terms of this Arrangement;
- b) Advance notice accompanied by a written opinion of a competent authority confirming the need for institutional care or treatment should the deporting Service possess evidence to suggest that any deportee requires such care or treatment because of a mental or physical condition. The deporting Service will, at the same time as notice is given or consent is sought, provide the receiving Service with advance written notice of the facts and circumstances of the case. The advance notice will be accompanied by a copy of the written opinion regarding institutional care or treatment. At the same time, or as soon as is administratively possible thereafter, the deporting Service will notify the receiving Service of the deportee's travel arrangements;
- c) In the case of a deportee who is of interest to law enforcement authorities in the receiving country, advance notice of the facts and circumstances of the case, including travel arrangements, to facilitate procedures at the port of entry;
- d) A written notice of the facts and circumstances of a denial of admission and parole or issuance of a minister's permit, whenever an individual is paroled or allowed, pursuant to a minister's permit, into the deporting country for legal proceedings or for humanitarian reasons or to permit the individual to apply for relief under the immigration laws of the deporting country. Such notice will be given immediately after denial of admission and parole or issuance of minister's permit to the immigration official in charge of the port of entry opposite the port of entry where parole was granted or where the minister's permit was issued.
- e) A written notice of the facts and circumstances relating to an alien authorized by the Immigration Appeal Board to return to Canada from the United States for the purpose of appearing before the Board for the hearing of the appeal from the removal order issued to that alien. Such notice will be made immediately upon the arrival of the individual in Canada, to the immigration official in charge of the opposite port of entry.

2. NOTICE OF RETURN OF CITIZENS, NATIONALS OR ALIENS:

2.1 Citizens or Nationals

Deportees who are citizens or nationals of Canada or the United States will be received by their country of citizenship or nationality under the terms of this Arrangement.

Before a citizen or national is returned to Canada or the United States, verbal notice will be given in those cases where:

- a) Citizenship or nationality in the receiving country can be satisfactorily established by presentation of a birth or baptismal certificate, a certificate of naturalization or citizenship, a valid or expired passport, or other verifiable evidence of citizenship or nationality; and
- b) The deportee does not require institutional care or treatment because of a mental or physical condition.

In the case of a citizen or national deportee who requires institutional care or treatment because of a mental or physical condition, written notice will be given to the receiving country.

2.2 Aliens

Aliens of the receiving country, who proceeded directly from the receiving country to the deporting country and were paroled or allowed under the authority of a minister's permit into the deporting country, will be permitted to return to the receiving country under the terms of this Arrangement provided verbal notice is given to the receiving country within one year of revocation or expiration of such parole or minister's permit or from the date of a final order of deportation, whichever is the later.

An alien, as described in paragraph 3.2, authorized by the Immigration Appeal Board to return to Canada from the United States for the purpose of appearing before the Board for the hearing of the appeal from the removal order issued to that alien will be permitted to return to the United States provided:

- a) the alien met the requirements of paragraphs 3.2 a) and b) at the time the removal order was made; and
- b) verbal notice is given to the United States Immigration and Naturalization Service upon the alien's departure from Canada at the conclusion of the hearing.

3. CONSENT TO RETURN ALIENS:

Any of the classes of aliens hereinafter defined, even though such persons would be subject to deportation by the receiving country, will be permitted to return to Canada or the United States under the terms of this Arrangement provided:

3.1 The alien was admitted to the receiving country for permanent residence and:

- a) The alien has not abandoned such residence by residing in a third country; and
- b) The alien proceeded directly from the receiving country to the deporting country and was not admitted for permanent residence at that time; and
- c) Formal request is made for consent to return the alien within one year from the date of a final order of deportation; and
- d) The alien came into the deporting country on or subsequent to August 1, 1949; or

3.2 The alien was not admitted to the receiving country for permanent residence but:

- a) The alien was denied admission at a port of entry and was ordered removed from the deporting country; and
- b) The alien proceeded directly from the receiving country to the deporting country; and
- c) Formal request for consent to return the alien is made within one year from the date of a final order of removal.

Before a deportee described in paragraphs 3.1 or 3.2 above is returned to Canada or the United States, a letter consenting to such return will first be obtained from the receiving Service.

A deportee described in paragraph 3.2 above will be permitted to return to the United States or Canada under the terms of this Arrangement, provided appropriate arrangements are made in the receiving country for a deportee who requires medical evaluation or institutional care or treatment. The receiving Service will undertake to arrange appropriate reception as expeditiously as possible.

4. TRANSPORTATION AND SUBSISTENCE:

The deporting Service will furnish a deportee with transportation and subsistence to the port of entry of the receiving country closest to the port of exit of the deporting country. Where, however, a deportee does not have sufficient funds to travel to the deportee's last place of residence in the receiving country at the person's own expense, the deporting country will furnish transportation and subsistence to the last place of residence. In exceptional and meritorious cases, transportation and subsistence may be provided to such other place as is acceptable to the deporting Service, provided the receiving Service has no objection to the substitution.

Where a transportation company is liable to carry the deportee, the deportee will be carried to such place as is required by law.

5. VOLUNTARY DEPARTURE:

The return of persons granted voluntary departure as defined in Part 10. of this Arrangement is not governed by Parts 2. or 3. of this Arrangement. Whenever possible, however, such a person will be required to enter the receiving country at the port of entry which is nearest to the place of final destination in the receiving country.

6. PORTS OF ENTRY:

Any deportee returned as provided for in Parts 2. and 3. of this Arrangement will be presented to any of the ports of entry listed hereunder for examination or inspection:

CANADA	UNITED STATES
Aldergrove, British Columbia	Alcan, Alaska
Armstrong, Quebec	Baltimore/Washington International Airport
Beaver Creek, Yukon Territory	Baltimore, Maryland
Blackpool, Quebec	Bangor, Maine
Calgary International Airport, Calgary, Alberta	Bar Harbor, Maine
Cornwall, Ontario	Blaine, Washington
Coutts, Alberta	Boston, Massachusetts
Douglas, British Columbia	Calais, Maine
Edmonton International Airport, Edmonton, Alberta	Calgary International Airport (Pre-Flight Inspection)
Edmundston, New Brunswick	Champlain, New York
Emerson, Manitoba	Cleveland Airport, Cleveland, Ohio
Fort Erie, Ontario	Derby Line, Vermont
Fort Frances, Ontario	Detroit, Michigan
Fredericton Airport, Fredericton, New Brunswick	Eastport, Idaho
Halifax International Airport, Halifax, Nova Scotia	Edmonton International Airport (Pre-Flight Inspection)
Hamilton Civic Airport	Frontier, Washington
Hamilton, Ontario	Highgate Springs, Vermont
Highwater, Quebec	Houlton, Maine
Huntingdon, British Columbia	International Falls, Minnesota
Kingsgate, British Columbia	Ketchikan, Alaska
Lansdowne, Ontario	Lynden, Washington
London Airport, London, Ontario	Madawaska, Maine
Mississauga, Ontario — Pearson International Airport, Terminals 1 and 2	Massena, New York
Montreal International Airport, Dorval, Quebec	Minneapolis, Minnesota
Montreal International Airport, Mirabel, Quebec	Montreal International Airport, Dorval, Quebec (Pre-Flight Inspection)
Niagara Falls, Ontario	New York, New York
North Portal, Saskatchewan	Niagara Falls, New York
Osoyoos, British Columbia	North Troy, Vermont
Ottawa International Airport, Ottawa, Ontario	Norton, Vermont
Phillipsburg, Quebec	Noyes, Minnesota
Prescott, Ontario	Ogdensburg, New York
Prince Rupert, British Columbia	Oroville, Washington

<i>CANADA</i>	<i>UNITED STATES</i>
Quebec International Airport, Quebec City, Quebec	Pittsburgh, Pennsylvania
Regina Airport	Port Angeles, Washington
Regina, Saskatchewan	Port Huron, Michigan
Rock Island, Quebec	Portal, North Dakota
Saint John Municipal Airport, Saint John, New Brunswick	Portland, Maine
St. Leonard, New Brunswick	Raymond, Montana
St. Stephen, New Brunswick	Sault Ste. Marie, Michigan
Sarnia, Ontario	Seattle, Washington
Saskatoon Airport, Saskatoon, Saskatchewan	Sumas, Washington
Sault Ste. Marie, Ontario	Sweetgrass, Montana
Stanhope, Quebec	Thousand Island Bridge, New York
Thunder Bay, Ontario	Toronto, Ontario, Canada — Pearson International Airport, Mississauga, Ontario (Pre-Flight Inspection) (Formerly Toronto International Airport)
Vancouver International Airport, Vancouver, British Columbia	Van Buren, Maine
Victoria, British Columbia	Vancouver International Airport (Pre-Flight Inspection)
Windsor, Ontario	Washington, District of Columbia (Dulles International Airport)
Winnipeg International Airport, Winnipeg, Manitoba	Winnipeg International Airport (Pre-Flight Inspection)
Woodstock, New Brunswick	
Yarmouth, Nova Scotia	

7. OFFICIAL RECORDS AND PRIVACY CONSIDERATION

The United States Immigration and Naturalization Service may use the information supplied by the Immigration Service of Canada for the purpose of ascertaining whether the deportee is wanted by U.S. law enforcement authorities; it may further provide to such authorities information supplied by the Immigration Service of Canada pursuant to this Arrangement for the said purpose and to facilitate the apprehension of the deportee by proper law enforcement authorities.

The United States Immigration and Naturalization Service will not use or disclose information supplied by the Immigration Service of Canada for a purpose or to an authority other than specified in this Arrangement without the written consent of the Immigration Service of Canada.

8. CONSULTATION AND AMENDMENT PROVISIONS:

The Parties agree to discuss matters which are the subject of this Arrangement and to make any amendments considered appropriate. Any disputes or issues of interpretation will be resolved by mutual agreement of the Parties.

9. TERMINATION PROVISION:

This Arrangement remains in full force and effect unless terminated in writing. This Arrangement may be terminated by either Party by giving written notice to the other Party at least one year prior to such termination.

10. DEFINITIONS:

The following terms are defined for the purposes of this Arrangement only, and like terms have a like meaning:

	<i>Canada</i>	<i>United States</i>
Admission	Lawful permission to come into Canada as a visitor or to establish permanent residence.	Lawful permission for an alien to enter the United States.
Alien	Any person who is not a Canadian citizen.	Any person who is not a citizen or national of the United States.
Deportee	Any of the persons described in parts 2. and 3. of this Arrangement.	Any of the persons described in parts 2. and 3. of this Arrangement.
Entry	Lawful permission to come into Canada as a visitor. Visitor means a person who is lawfully in Canada, or seeks to come into Canada for a temporary purpose, other than a Canadian citizen, a permanent resident, a person in possession of a minister's permit, or an immigrant authorized to come into Canada pursuant to paragraph 14(2)(b), 23(1)(b), or 32(3)(b) of the Immigration Act, 1976, as amended.	Any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that departure to a foreign port or place or to an outlying possession was not voluntary: Provided, that no person whose departure from the United States was occasioned by deportation proceedings, extradition, or other legal process shall be held to be entitled to such exception.
Exclusion	A formal determination of inadmissibility.	A formal determination of inadmissibility.
Final Order of Removal	A signed exclusion order or deportation order not stayed pursuant to the Immigration Act, 1976, as amended.	A signed exclusion order or deportation order ready for execution and unimpeded by legal challenge.
Legal Proceedings	All proceedings authorized or sanctioned by law and brought or instituted in a court of record or administrative tribunal for the recognition of a right or an enforcement of a remedy.	All proceedings authorized or sanctioned by law and brought or instituted in a court of record or administrative tribunal for the recognition of a right or an enforcement of a remedy.
Minister's Permit/ Parole	A valid and subsisting written permit, issued at the discretion of the Minister of Employment and Immigration or a delegate, authorizing an inadmissible person to come into and remain in Canada.	An exercise of discretionary authority of the Attorney General to permit an inadmissible alien to come into the United States for emergent reasons, or for reasons deemed strictly in the public interest.

	<i>Canada</i>	<i>United States</i>
Permanent Resident/ Permanent Residence	A person lawfully admitted for permanent residence, who has not become a Canadian citizen and has not ceased to be a permanent resident.	The status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.
Removal Order	An exclusion order or a deportation order.	An exclusion order or a deportation order.
Voluntary Departure	Permission to depart Canada voluntarily granted to a person: a. Against whom a removal order has been made; or b. Who has been issued a departure order; or c. Who has become the subject of a direction for inquiry or has been arrested for inquiry, but has been granted permission to leave before the inquiry is completed.	Authorization for a person to depart the United States prior to the commencement of deportation proceedings or subsequent to a deportation hearing.

11. EFFECTIVE DATE:

This Arrangement will be effective on its signature by authorized representatives of the Parties. The present Arrangement will supersede the Arrangement for the Exchange of Deportees between Canada and the United States, of August 1, 1949.

Done in duplicate this 24th day of July A.D., 1987 at Williamsburg, Virginia, United States of America, in English and in French, each language version being equally authentic.

For the Canada Employment and
Immigration Commission

James B. Bissett
Executive Director,
Immigration

For the United States Immigration and
Naturalization Service,

Department of Justice
Alan C. Nelson
Commissioner

APPENDIX M
SAMPLE OF IMM 1443 (06-87) B - NOTICE OF ISSUANCE OF MINISTER'S PERMIT



Employment and
Immigration Canada Emploi et
Immigration Canada

Date :

Date :

To : Port Director,
United States Immigration and
Naturalization Service

A : Directeur du point d'entrée
Service d'immigration et de
naturalisation des Etats-Unis

From : Manager
Canada Immigration Centre

De : Directeur
Centre d'immigration du Canada

Notice of issuance of Minister's permit (reference Part I.D. of the
Reciprocal Arrangement for the Exchange of Deportees between
Canada and the United States) in the matter of

La présente a pour objet de vous aviser de la délivrance d'un permis
du Ministre (consulter la partie I.D. de l'Arrangement de reciprocité
concernant l'échange de personnes expulsées entre le Canada et les
Etats-Unis) en ce qui concerne

Name
Date of Birth
Citizenship
Minister's permit No
Date Issued
Issued By

Nom
Date de naissance
Citoyenneté
N° du permis du Ministre
Date de délivrance
Délivré par

IMM 1443 (06-87)

Canada

APPENDIX N
SAMPLE AIRLINE ANNOUNCEMENT TO PASSENGERS

Canadian officials will be conducting a brief review of all passports and travel documents immediately after touch down. To prevent unnecessary delays, all passengers are required to have their passports at hand and available for inspection by Canadian officials immediately on landing. The purpose of the brief review is to facilitate the entry of persons with proper documents by quickly identifying those persons who may require a more lengthy inspection. Thank you for your co-operation.

APPENDIX O
SAMPLE LETTER TO AIRLINE MANAGERS

Dear

I am writing to remind you that the Canadian Immigration Program has undertaken a number of new initiatives. Many of these will assist with the orderly flow of airline passengers into Canada, while others will relieve carriers of some costs for which they were formerly responsible (such as detention costs incurred after the initial 72-hour period). It is my hope that the new initiatives will provide for closer co-operation between ourselves for our mutual benefit.

The specific purpose of this letter is to discuss the introduction of a limited pre-screening procedure for certain arriving flights. Pre-screening of passengers refers to a quick verification by Immigration officials that arriving passengers possess travel documents. The verification will take place either on board arriving aircraft or at a point as close to the exit as possible. This activity is designed to identify persons who disembark without travel documents, and to segregate them from other passengers. This will help to ensure that legitimate passengers are not delayed by persons who disregard normal entry procedures.

You will be notified in advance when we intend to pre-screen one of your incoming flights. This will allow you to alert your flight crew who, in turn, may then make the attached en route announcement asking passengers to have passports and travel documents ready for verification immediately on landing.

It is my hope that by working together on a number of fronts — including disembarkation screening — we can ensure the orderly flow of passengers to Canada with a minimum of disruption to all parties concerned. If you have any questions or comments on this or other related matters please feel free to contact me at your convenience.

Yours sincerely,

APPENDIX P
SAMPLE OF IMM 5296 (02-94) B - MISSING CHILDREN REPORT



Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

MISSING CHILDREN REPORT
RAPPORT SUR LES ENFANTS DISPARUS

PROTECTED WHEN COMPLETED - B
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CITIZENSHIP CITOYENNETÉ			
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VÉRIFICATIONS

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REMARKS - OBSERVATIONS

APPENDIX P **SAMPLE OF IMM 5296 (02-94) B - MISSING CHILDREN REPORT**

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APPENDIX Q
OUR MISSING CHILDREN – MISCELLANEOUS

1) Throwaways: List of agencies who can lend assistance:

- Children's Aid Society
- Operation Go Home
- Local shelters
- YMCA – local
- Youth Protection Agencies

2) Our Missing Children office, RCMP HQ, Ottawa

You can contact the OMC office 24 hours a day/7 days a week for any information related to missing children and any assistance, i.e. request an interpol check. They can be reached at the following number. You can contact the office at **(613) 990-8585**:

APPENDIX R

SAMPLE OF FORM E-514 – OUR MISSING CHILDREN RECOVERY REPORT

- The E-514 is the OMC's standardized missing children recovery report. It is issued jointly by Revenue Canada, Customs and Citizenship and Immigration Canada to record enforcement actions involving the recovery of abducted or runaway children.
- Correct and uniform completion of this report in its entirety is required and is essential in order to complete accurate information pertaining to missing children, i.e. abductor profiles, victim profiles, most active regions, times, etc). Incomplete forms will be returned to their originators for completion.
- The E-514 form should be completed only by the recovering department.

Once completed, a copy of the E-514 should remain at the port of entry concerned while the original is to be forwarded to the regional coordinator. The regional coordinator will then send the original copy to their respective national coordinator at OMC HQ, after retaining a copy for filing purposes. Contact your regional coordinator for copies of the E-514.

- **COMPLETING THE E-514 FOR INTELLIGENCE PURPOSES:**

This section should be completed in exceptional circumstances only when, for example, examination of the case suggest a potential abduction, but computer checks, posters, show negative results. This information may be of use at a later date.

Because in certain cases, parties can not be detained, it is imperative that CI/IOs capture as much of the information as possible and identify that the information is for intelligence purposes only.

APPENDIX R (CONT'D)

SAMPLE OF FORM E-514 – OUR MISSING CHILDREN RECOVERY REPORT

Government
of CanadaGouvernement
du CanadaOur Missing
Children Recovery ReportRapport d'incident
de nos enfants disparusPROTECTED (when Completed)
PROTÉGÉ (une fois rempli)

The information on this form is collected in the exercise of powers and is protected under the provisions of the Privacy Act. The form is stored in a secure information base. Investigation report no. EDC-PPJ-000.

Les renseignements recueillis sur ce formulaire sont recueillis dans le but de constituer des dossiers et sont protégés par la Loi sur l'accès à l'information et la Loi sur la protection des renseignements personnels. Le formulaire est conservé dans une base de renseignements personnels concernant les enquêtes de RDC-PPJ-000.

FOSS Identification No. / N° d'identification du SSOBL	CPIC Number / N° du CPIC	Report Number / Numéro de rapport
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Region / Région	Port of Entry / Bureau de déclaration	Date
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Incident Type / Genre d'incident

<input type="checkbox"/> A Parental Abduction Enlèvement — Parent	<input type="checkbox"/> Stranger Abduction Enlèvement — Étranger	<input type="checkbox"/> Runaway Fugitif	<input type="checkbox"/> B Lost-Cust Avert de surveillance	<input type="checkbox"/> Indicators/Prairie Indices/Prairie	<input type="checkbox"/> Other Autre	<input type="checkbox"/> C Intelligence Only Renseignements seulement
--	--	---	---	--	---	---

Mode of Transportation / Moyen de transport

<input type="checkbox"/> Vehicle Type Véhicule	<input type="checkbox"/> Bus Autobus	<input type="checkbox"/> Train Train	<input type="checkbox"/> Air Avion	<input type="checkbox"/> Car and Freight Vn. / Vn. du transport et du vol	<input type="checkbox"/> Maritime Maritime	<input type="checkbox"/> Other Autre
License No. / N° du permis	Previous Status / Pré-état	Registration No. / N° d'immatriculation				

Child Data / Information sur l'enfant

Child 1 / Enfant 1	
Name / Nom	Sex / Sexe
Date of Birth / Date de naissance	Citizenship / Citoyenneté
Destination in Canada / Destination au Canada	Type of Identification / Genre d'identification
Child 2 / Enfant 2	
Name / Nom	Sex / Sexe
Date of Birth / Date de naissance	Citizenship / Citoyenneté
Destination in Canada / Destination au Canada	Type of Identification / Genre d'identification

Abductor Data / Information sur le ravisseur

Abductor 1 / Ravisseur 1	
Name / Nom	Sex / Sexe
Date of Birth / Date de naissance	Citizenship / Citoyenneté
Destination in Canada / Destination au Canada	Type of Identification / Genre d'identification
Occupation / Emploi	Relationship to Child / Lien avec l'enfant

Results / Résultats

Attaching Agencies
Organismes qui ont approuvé leur appui

Officer Involved / Officier impliqué	Officer Involved / Officier impliqué	Officer Involved / Officier impliqué
Name / Nom	Name / Nom	Name / Nom
Department / Ministère	Department / Ministère	Department / Ministère
Badge No. / N° d'insigne	Badge No. / N° d'insigne	Badge No. / N° d'insigne
Telephone No. / N° de téléphone	Telephone No. / N° de téléphone	Telephone No. / N° de téléphone
Signature	Signature	Signature

Please attach photocopies and other relevant information. / Veuillez attacher à la présente toutes photocopies et tous renseignements pertinents.

ONCE COMPLETED / UNE FOIS REMPLI

Port Staff: Make a photocopy for your POC file and send the original to your Regional Coordinator.
Personnel du bureau: Faire une photocopy pour vos dossiers et envoyer l'original à votre coordonnateur régional.
Regional Coordinator: Send the original to your National Coordinator and keep a photocopy for your records.
Coordonnateur régional: Envoyer l'original au coordonnateur national et conserver une photocopy dans vos dossiers.

E-514 (REV.1)
Forme en Canada
Version en Canada

Canada

APPENDIX S

WHAT ADVICE TO GIVE PARENTS WHO TRAVEL WITH CHILDREN:

- **Custody orders:** Where the parent has obtained a custody order in regard to legally establishing the custody of the child, it should be carried as proof. There can be several existing custody orders held by both parents. Custody orders can be issued by the province, state or country. However, the are not national in scope. In some situations, these orders can overlap.
- **Identification for children:** Parents often call inquiring about what kind of identification they should have for the child. The best type of identification is a passport or birth certificate. Often they will state that they do not have this type of identification. In these circumstances the only thing you can advise them is that if they travel without a passport or birth certificate it will be at the examining officers' discretion as to whether or not they will be admitted.
- **Letters from parents:** when asked by travellers what types of consent are required, you may suggest the followings:
 - Name and address of guardian;
 - telephone numbers work/home;
 - the destination in Canada;
 - the period of time the child will be in Canada;
 - authorization by the legal guardian for the child to travel with another adult and to be outside their country.
- **Proof of relationship:** In addition to identification we council parents and guardians to carry proof of their relationship to the child. For parents the best proof would be a birth certificate which would identify one or both of the parents. The parents identification should then correspond to the child's name. In adoption cases they should carry proof of the adoption.
- Where appropriate you may wish to provide the parent or the guardian with a copy of the handout of Tips for Parents and Guardians (see APPENDIX R).

APPENDIX T

TIP SHEET FOR PARENTS AND GUARDIANS

Canada Customs, Citizenship and Immigration Canada, and the RCMP are working together to protect abducted children and runaways who are encountered crossing the Canada/US border. In cooperation with other Canadian and US agencies, and with law enforcement agencies in more than 40 countries, they exchange information and assist each other in finding missing children and reuniting them with their families.

Since 1986, Canada Customs Inspectors and Canada Immigration Officers have helped recover more than 500¹ runaway or abducted children in Canada. These officials are on full-time alert for children who need protection and therefore pay extra attention to children as they enter Canada. A child or youth travelling without proper identification, or in the company of adults other than their legal guardian, may be subjected to a more thorough interview. This additional scrutiny is aimed at ensuring the safety of the child.

To avoid delays when entering Canada, the following tips are useful.

TIPS FOR PARENTS AND GUARDIANS:

- Always carry proper identification for yourself and the child(ren) such as birth certificate, baptismal certificate, citizenship card, passport, record of landing (IMM 1000) or Certificate of Indian status.
- If you are a single parent, have copies of relevant legal documents, such as custody rights.
- If you are not the legal guardian of the child(ren), carry a letter of permission or authorization for you to have custody when entering Canada. A letter would also facilitate entry for any one parent travelling with their child. If possible, this permission should contain contact telephone numbers for the legal guardian or parent.
- If you are travelling as part of a caravan, be sure that you are in the same vehicle as your child(ren) when you arrive at the border.
- Have your child(ren) memorize your home and/or office telephone number and teach him/her how to reach you in an emergency situation.

If you are travelling with children and encounter a few more questions than normal from our Customs Inspectors or Immigration Officers, please be patient: **the protection and safety of children is everybody's concern.**

For more information please contact the OUR MISSING CHILDREN Office at 613-990-8585.

APPENDIX U
BORDER LOOK-OUTS

GENERAL

- Request for Border look-out/alerts will be only issued for law enforcement agencies.
- Requests will **NOT** be accepted from parents, non profit organizations, private investigation firms, lawyers, or any other individuals. If a request is received, guidelines must be given to these subjects to contact their local police force.
- Each look-out/alert will have a contact person listed in the event of a recovery:
 - the police force requesting the alert, with telephone number and if possible officer's name will be listed;
 - the name of the officer issuing the lookout;
 - give a brief description of the situation, i.e. the reasons for which the enforcement agency is requesting the look-out.

Missing children organizations should never be the contact persons nor should parents.

- When applying for look-outs/alerts dealing with **potential abduction cases**, requests must be referred to the Our Missing Children National Coordinator. These requests will not be issued regionally/locally.
- All ports of entry are required to notify their regional coordinator in the event of a lookout being issued; in turn, the regional coordinator will inform OMC HQ.
- Local POEs can issue lookouts to U.S Customs/USINS with notification to their regional coordinator; OMC HQ will be responsible to issue National U.S. Customs/USINS lookouts.
- **For Canada Customs Only:** In the event of Highway PALS lookouts, OMC HQ will fax relevant details of the alert directly to regional coordinators for immediate input into pals. It is important that regional coordinators receive a hard copy transmission of the alert so as to avoid any miss-communication.



IMMIGRATION

Canada

Chapter PE 3

**Examining Canadian
Citizens, Registered
Indians, Returning
Residents and Minister's
Permit Holders**





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Examining Canadian Citizens, Registered Indians, Returning Residents and Minister's Permit Holders

Abbreviations and Short Forms	
Act	<i>Immigration Act</i> , as amended
CIC	Canada Immigration Centre
CIIC	Canadian Immigration Identity Card
CIIR	Canadian Immigration Identity Record
FOSS	Field Operations Support System
IAD	Immigration Appeal Division of the Immigration and Refugee Board
IO	Immigration Officer
POE	Port of Entry
SIO	Senior Immigration Officer

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how an immigration officer examines Canadian citizens, registered Indians, returning residents and Minister's permit holders at a port of entry.

For information on persons who are seeking entry as students, visitors or foreign workers, see chapters PE 5, *Examining Students*; PE 6, *Examining Visitors*; and PE 7, *Examining Foreign Workers*. This chapter does not include any of these categories.

1.2 Policy intent

Canadian immigration policy aims for the examination of Canadian citizens, registered Indians, returning residents and Minister's permit holders are:

- to ensure that all persons are subject to standards of admission that do not discriminate in a manner inconsistent with the *Canadian Charter of Rights and Freedoms*
- to facilitate the movement of those persons who have a right to come into Canada, and
- to ensure that those persons who may not or do not have a right to come into Canada are prevented from doing so.

2. CANADIAN CITIZENS

2.1 The right to come into Canada

The Act provides that “where a person seeks to come into Canada, the burden of proving that that person has a right to come into Canada or that his admission would not be contrary to this Act or the regulations rests on that person” [A8(1)].

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an “A” prefix followed by the section number, as here: the Act, subsection 8(1).

Although Canadian citizens must report for examination in accordance with A12(1), they have a right to come into Canada. A Canadian citizen is a person who is a citizen within the meaning of the *Citizenship Act* [A4(1), A2(1)].

As an immigration officer (IO) at a port of entry (POE), you must deal with Canadian citizens as expeditiously as possible. You must be satisfied with the identity of the person you are examining, but you should not engage in unnecessary questioning. Once you establish the person's identity, further questioning is seldom necessary. You will normally examine a Canadian citizen only when an officer at the primary inspection line has a reason to doubt the person.

2.2 Determining Canadian citizenship

You may accept the following documents as proof of Canadian citizenship:

- Canadian passport
- Certificate of Canadian Citizenship (*both large and pocket or wallet size; the smaller form now exists in two versions: one with a 44mm x 57mm (1 3/4" x 2 1/4") photograph, and the other with a 35mm X 53mm (1 3/8" X 2 1/16") photograph*)
- Canadian Emergency Passport (*an officer at the primary inspection line will automatically refer a person in possession of a Canadian Emergency Passport to you; after you verify the person's identity, retain the passport and forward it to the Passport Office, Department of Foreign Affairs and International Trade, Ottawa*)
- Certificate of Naturalization
- Certificate of Registration of Birth Abroad, and
- Certificate of Retention of Canadian Citizenship.

While a Canadian provincial birth certificate is a good indication that the individual is a Canadian citizen, you must be satisfied that the holder is the rightful holder.

2.3 Holders of Canadian Certificates of Identity

The Department of Foreign Affairs and International Trade may issue a Canadian Certificate of Identity to a permanent resident of Canada who has not acquired Canadian citizenship and who is unable to obtain other travel

documents. Within the validity of the certificate, you must allow the holder of a certificate of identity to return to a Canadian POE and physically come into Canada, whether or not you allow the person to come in officially as a returning resident.

Do not confuse a certificate of identity with a Canadian Refugee Travel Document, which is issued to a person who has been recognized by Canada as a Convention refugee in accordance with Article 28 of the United Nations 1951 *Convention Relating to the Status of Refugees* and 1967 *Protocol Relating to the Status of Refugees*, and is either a permanent resident or a permit holder.

2.4 Establishing citizenship without documents

Occasionally you will encounter a Canadian citizen who has no documentation. Remember that the onus is on the person to establish his or her identity. A person arriving off an overseas flight would normally have had to provide proof of identity to get on the flight. You should question the person claiming to be a Canadian citizen until you are satisfied.

You should be aware of the following special circumstances:

- a) **domicile or marriage before January 1, 1947:**
 - i) a British subject who had maintained Canadian domicile *before January 1, 1947* may have a claim to Canadian citizenship
 - ii) a woman married to a man of foreign nationality *before January 1, 1947* may have lost her claim to Canadian citizenship
- b) **naturalization, birth abroad or absence before February 15, 1977:**
 - i) a Canadian citizen who naturalized as a citizen of another country (or whose parents naturalized as citizens of another country) *before February 15, 1977* may have lost his or her Canadian citizenship
 - ii) a child born abroad *before February 15, 1977* to Canadian citizens may have lost his or her citizenship if he or she did not have Canadian domicile on his or her 24th birthday
 - iii) a naturalized Canadian citizen may have lost his or her citizenship if he or she was absent for 10 consecutive years between January 1, 1947 and July 7, 1967, and
- c) **birth abroad after February 14, 1977:** a second-generation Canadian citizen born abroad *after February 14, 1977* may lose his or her Canadian citizenship on his or her 28th birthday. For clarification of the term "second-generation Canadian citizen born abroad", see section 2.5 below.

Persons born in Canada to foreign diplomats may not be citizens. One of the parents must be a Canadian citizen or permanent resident at the time of the child's birth.

2.5 Proof of citizenship of minor children

Children born abroad of Canadian fathers after December 31, 1946 and before February 15, 1977 are *not* Canadian citizens, unless they have been registered with the Citizenship Registration Branch, Department of Canadian Heritage in Ottawa.

Unregistered children may still become citizens under the provisions of ss. 4(3) and 3(1)(e) of the *Citizenship Act*. In these cases you must establish the relationship between the parent or parents and the child, after which the

child may be allowed to come into Canada under a Minister's permit. You should counsel the parent or parents to register the child with the Citizenship Registration Branch, and if the child does not obtain citizenship, to report with the child to a Canada Immigration Centre (CIC) so that the child may be granted permanent residence in Canada.

Children who were born abroad after February 14, 1977 of Canadian parents are Canadian citizens, so long as they are not second-generation persons born abroad. A second-generation person born abroad is the son or daughter of a person *born abroad* who made and has a claim to Canadian citizenship under ss. 3(1)(b) or 3(1)(e) of the *Citizenship Act*. You must verify the citizenship of the parent or parents, and the relationship between the parent or parents and the child. Once you have verified both issues, the child has the right to come into Canada. Although registration of births abroad is no longer a requirement, you should encourage the parents to establish the child's citizenship under s. 3(1)(b) of the *Citizenship Act*.

2.6 Verifying citizenship

If you have reasonable doubts about a claim to Canadian citizenship, send an Application for Search of Citizenship Records form (MCC 3-58) to:

Citizenship Registration Branch
P.O. Box 7000
Sydney, N.S. B1P 6V6
Tel: 902-564-7800, 564-7801, 564-7802
Fax: 902-564-7667
Telex: SOS-SYD 019-35295

The Citizenship Registration Branch will accept telephone, facsimile and telex requests *only* in very urgent cases, such as a person under examination at a POE awaiting a decision on admissibility. You *must* follow your request with a completed MCC 3-58 form.

Supplies of the MCC 3-58 form are available from the Forms Liaison Officer, Citizenship Registration and Promotion, Ottawa, Ontario K1A 1K5 (tel: 819-994-2581).

2.7 Laissez-passer

Laissez-passer are usually issued by Canadian embassies or consulates abroad to Canadian citizens. They are evidence to Canadian IOs and Customs officers that for sufficient reason the bearers should not be subjected to the usual full examination at the border: for example, the bearers may be carrying secret documents. Laissez-passer are used sparingly, and are issued only when a Canadian embassy or consulate vouches for the complete reliability of the bearer and there is sufficient reason for issuing one. In rare cases laissez-passer may be issued in lieu of diplomatic or courtesy visas.

Laissez-passer are issued in the following form:

The Canadian ____ presents compliments to the Chief Officers of Customs and Immigration at the international boundary (or the port of entry in Canada) and commends to their good offices the bearer of this letter, *here the title and name of the person concerned and the person's purpose in entering Canada will be stated.*

(Title and name of the person concerned) is the holder of passport No. X. The Canadian ____ would appreciate the extension of the usual courtesies and facilities to title and name of the person concerned.

The document bears the seal of the issuing office. You should collect the laissez-passer from the bearer at the POE and forward it to the Canadian embassy, consulate or office that issued it.

2.8 Emergency passports

An emergency passport is available only at posts abroad, which may issue it primarily to facilitate the return to Canada of Canadian citizens. It can also be issued as a one-trip document for travel from one post without passport services (for example, a Canadian Honourary Consul) to another post with full passport services.

The emergency passport is approximately 8 x 10½ inches in size, printed on light green paper, and is serially numbered.

An IO at the Primary Inspection Line must refer a person presenting an emergency passport to an immigration secondary examination. The Passport Office requires the surrender and return to the Passport Office of an emergency passport immediately on the holder's arrival in Canada or at the destination for which the passport was issued. You should recover an emergency passport and promptly forward it to the Passport Office, Ottawa K1A 0G3. A space is provided on the face of the document for your signature indicating that you have received the passport.

3. REGISTERED INDIANS

3.1 The right to come into Canada

A person who is registered as an Indian under the *Indian Act*, whether or not that person is a Canadian citizen, has the same rights and obligations under the *Immigration Act* as a Canadian citizen [A4(3)].

Once you have established that a person has Indian status, you must allow the person to come into Canada. Indian status is established by a Certificate of Indian Status.

3.2 Certificates of Indian Status

Certificates of Indian Status are issued on request to persons registered as Indians under the *Indian Act* who have reached 16 years of age. Under special circumstances, certificates can also be issued to registered Indian children under the age of 16.

The regional office of the Department of Indian and Northern Affairs is responsible for Certificates of Indian Status, including procedures for laminating certificates and for verifying that the information is consistent with the Indian Register. The certificates are normally issued by the regional, district or band office charged with maintaining the field copy of the Indian Register for the band.

You should examine a person without a certificate in the normal manner. Certificates of Indian Status are computerized in a central registry at the Department of Indian and Northern Affairs. If you require verification of Indian status or have reason to doubt the authenticity of a card being presented, you may contact the Supervisor, Registration Services, National Headquarters, Department of Indian and Northern Affairs by telephone (819-994-4028) or by facsimile (819-997-6296).

3.3 The Jay Treaty

It is the position of both the Canadian and U.S. governments that the admission of non-citizen North American Indians is governed solely by immigration legislation and not by the Jay Treaty. The rules governing the admission of American Indians to Canada differ from those that govern the access of Canadian Indians to the U.S.

Under the *Immigration Nationality Act*, Canadian Indians who can demonstrate that they have "50% or more Indian blood", by presentation of their band registration card, are entitled to permanent resident status in the U.S. As a result, Canadian Indians who arrive at American POEs and state that they intend to work in the U.S. are instructed by United States Immigration and Naturalization Service officials to apply for permanent resident status on the spot. The applicants are immediately issued temporary residency cards and are entitled to work in the U.S. without employment authorizations.

Under Canadian immigration law, however, North American Indians are only accorded the benefit of A4(3) (that is, the rights of citizens) if they are registered on the Canadian Band Lists. A U.S. Indian can only obtain registered band status if he or she can establish that his or her mother or father was a member of a Canadian band. Therefore American Indians

coming to Canada as students require student authorizations, and those coming to work in Canada require employment authorizations. At the POE you should facilitate the entry of American Indians who wish to visit Canada.

The question of the right of a non-registered native person to work in Canada is currently before the courts, and the department is continuing to apply the Act to non-registered native persons. Given the contentious nature of the issues involved, it is important for you to know that you are dealing with a grey area in the law. You should communicate refusal of entry to those not qualifying under the Act gently and with sensitivity. Virtually all of the members of the Indian Nations whose traditional lands straddle the border are entitled to be registered under the Indian Act, and once they have exercised this option, they are entitled to enter Canada freely under A4(3). Some American Indians undoubtedly have difficulty accepting that Canadian law requires them to be accepted formally as members of a Canadian Indian band before they can legally work in Canada, and you must handle cases of this nature tactfully, particularly while the issue is under litigation.

4. RETURNING RESIDENTS

4.1 Rights of permanent residents

Under A2(1) a permanent resident is a person who:

- has been granted landing
- has not become a Canadian citizen, and
- has not ceased to be a permanent resident under A24 or A25.1.

A permanent resident includes a person who has become a Canadian citizen but has subsequently ceased to be a Canadian citizen under s. 10(1) of the *Citizenship Act*, without reference to s. 10(2) of the *Citizenship Act* [A2(1)]. Section 10(1) of the *Citizenship Act* refers to obtaining Canadian citizenship through fraudulent means. For further information, see the evidence requirements for an A27(2)(i) report in chapter PE 9, *A20(1) Reports and Voluntary Withdrawal*.

4.2 Establishing proof of residence

Under A4(1), permanent residents have a right to come into Canada unless you establish that the person is described in A27(1). Permanent resident status directly confers or establishes eligibility for certain fundamental rights and privileges that should be neither carelessly extended, nor once attained, lightly rescinded. It is particularly important that you neither arbitrarily remove nor casually maintain entitlement to this status and all that it entails.

The following documents will satisfy proof of residence:

- the original Record of Landing
- a certified true copy of a Record of Landing document issued by National Headquarters
- a letter issued by a CIC or National Headquarters verifying permanent residence
- a permanent resident card, and
- a passport duly stamped showing the date on which permanent residence was granted, if the person was granted landing before 1972.

If a document is not available, you must satisfy yourself about the person's status by questioning the person and verifying the information through the Field Operations Support System (FOSS). You may verify cases that began before FOSS became operational by contacting the Query Response Centre at National Headquarters (tel. 819-994-4441, 994-4442, 991-4443).

When you are satisfied that the person is a permanent resident, you must allow him or her to come into Canada without delay.

4.3 Loss of permanent resident status

A person ceases to be a permanent resident:

- when a deportation order has been made against that person and the order is not quashed or the order's execution is not stayed under A73(1) [A24(1)(b)], or

- when the person leaves or remains outside Canada with the intention of abandoning Canada as that person's place of permanent residence [A24(1)(a)].

Under A24(2), if a permanent resident is outside Canada for more than 183 days in any 12-month period, the person is deemed to have abandoned Canada as his or her place of permanent residence, unless the person satisfies an IO or an adjudicator that he or she did not intend to abandon Canada as his or her place of permanent residence.

Once the person exceeds the 183-day limit, the onus is on the person to explain why the deeming provision of A24(2) should not apply. You should examine all the available facts before making a decision. While A24(2) clearly gives you the authority to make the decision, it does not preclude the person from withdrawing and seeking a second opinion at a later date. You are not expected to forecast the opinions of adjudicators or the members of the Immigration Appeal Division (IAD) of the Immigration and Refugee Board when you make a decision. You must make an appropriate decision based on the available facts at the time you review the circumstances of each case.

The final determination that a person has ceased to be a permanent resident and may not come into Canada as a returning resident is made by an adjudicator at an inquiry. The official departmental records will continue to show a person's status as being that of permanent resident until a final determination has been made.

4.4 Determining loss of permanent resident status

To form an opinion on whether or not a person has ceased to be a permanent resident, you should consider the following factors:

- a valid Returning Resident Permit (IMM 1228; see APPENDIX A)
- a letter stating that the person has been or is employed by a Canadian company operating outside Canada
- a document pertaining to his or her attending school outside Canada
- a document citing medical reasons for his or her tardiness in returning to Canada
- notations, foreign visa stamps or forms in the person's passport showing the status granted in another country
- the person's intention at the time of departure, including:
 - the date the person left
 - the purpose of leaving
 - the destination
 - whether the person left his or her family in Canada
 - the location of the person's family, and
 - what the person did with his or her assets
- the person's present intention: that is, when the person anticipates returning to Canada permanently, if that is not the purpose of his or her current trip
- the person's links to Canada, including:
 - financial assets (such as bank accounts, mortgages, loans, savings and so forth)

4.5 Returning Resident Permits (IMM 1228)

4.6 Case law

4.6.1. *D'Souza*

- the length of time the person spent in Canada before leaving
 - whether the person has a job to which to return
 - what relatives the person has in Canada
 - whether the person maintains a residence, and
 - the reason for remaining outside Canada
- i) whether the person has a job outside Canada
 - j) where the person's family is located (and if not in Canada, whether they will be joining him or her here), and
 - k) whether the person has more than one travel document (persons have been known to try to hide previous trips outside the country by using more than one travel document).

If the person is unable to produce a permanent resident document, you may have to rely on the testimony of individuals who know the person.

In the absence of documentary evidence, or in conjunction with documentary evidence, the answers to these and other relevant questions should serve as the basis for reaching a decision on whether the person has abandoned Canada as a permanent residence.

For children under 14 years of age, presentation of the holder's copy of an Immigrant Visa and Record of Landing (form IMM 1000; see APPENDIX B) showing that the person has been landed will normally suffice to establish the child's retention of permanent resident status, and hence the right to come into Canada.

For case law on loss of permanent residence, see section 4.6 below.

The department expects A25.1 to be proclaimed in early 1994; until then, the old provisions of the Act will apply [A24, A25], including the provision for permanent residents to apply for and obtain a Returning Resident Permit (IMM 1228) [*Immigration Regulations*, s. 26].

When presented at a POE and in the absence of evidence to the contrary, a returning resident permit is proof that the holder has not abandoned Canada as his or her place of permanent residence. Possession of a returning resident permit is neither a requirement to come in as a returning resident, nor is it a guarantee that the holder will be allowed to come into Canada.

Possession of a returning resident permit does signify that the holder has been examined by an IO and that the IO was satisfied that the holder had not ceased to be a permanent resident. Because an IO has carefully assessed the applicant's intentions concerning the maintenance of residence in Canada before issuing the permit, you should not need to conduct a lengthy examination when a person presents a returning resident permit at a POE unless there is good evidence that the holder has ceased to be a permanent resident or has obtained the permit fraudulently.

The Immigration Appeal Board ruled in the case of Troy Anthony D'Souza that a child under 14 cannot form the intention of abandoning Canada as his or her place of permanent residence [*D'Souza v. Minister of Employment and Immigration*, Immigration App. Bd., Toronto, Doc. No. 79-9012, October 8, 1980].

Unless a deportation order has been made against him or her, a permanent resident who left Canada as a child to take up residence elsewhere and who, before his or her 14th birthday seeks to come into Canada to re-establish residence, must be regarded as having retained permanent resident status.

A permanent resident who, before attaining the age of 14, left Canada and took up residence elsewhere and who after reaching 14, returns to Canada to re-establish residence, should be regarded as having retained permanent resident status if he or she has returned to Canada at the first opportunity after reaching the age at which he or she can make a decision concerning his or her place of residence, and signifies his or her intentions to immigration officials.

The requirement to come to Canada at the first opportunity after being of age should not be interpreted as an enjoiner to come forward immediately on attaining 14 years of age. Rather, it must be interpreted in light of individual circumstances. It is quite conceivable that no such opportunity will occur until some time after the person concerned has become financially independent of his or her parents.

4.6.2. *Etzaguirre*

In the *Etzaguirre* case the appellant was compelled into a series of actions by her husband, who made the ultimate decisions on everything which affected the lives of the family members [*Etzaguirre v. Minister of Employment and Immigration*, Immigration App. Bd., Toronto, Doc. No. 79-9268, December 11, 1980]. These actions resulted in the appellant abandoning Canada and returning to Chile to live permanently. The appellant then separated from her husband in Chile and, on obtaining custody of her children and an exit permit from that country, immediately returned to Canada.

The board held that where there is a lengthy absence from Canada that absence must be reasonably explained, and that the board must be satisfied that the absence and delay in returning to Canada were not motivated by an intention to abandon Canada permanently. In this case the appellant was away from Canada from 1974 until 1978. Having regard to the finding of the board that the husband had foisted his intentions on his wife, the appellant's appeal was allowed and a deportation order against her quashed.

4.6.3. *Daniels*

In *Daniels* the Immigration Appeal Board determined on all the evidence that the appellant was not a permanent resident, therefore did not have a right of appeal under s. 72 [s. 70] of the *Immigration Act*, and dismissed his appeal [*Daniels v. Minister of Employment and Immigration*, Immigration App. Bd., Toronto, Doc. No. 80-925, November 27, 1980]. The appellant had returned to Scotland to live with his wife and family, who had adamantly refused to live in Canada. The appellant was faced with a difficult choice between abandoning Canada as his place of permanent residence or abandoning his family.

The board held that the appellant exercised the difficult choice and established his permanent residence in Scotland. They sought to make a distinction between cases where the individual left Canada for a temporary purpose or a limited duration and returned as soon as the temporary condition was resolved, and cases where the person was not voluntarily residing outside of Canada but was forced to do so because of circumstances beyond the individual's control.

In cases such as this one the decision to leave was voluntary, and neither element of residence (bodily residence or intent) was met, with the result that permanent resident status in Canada was lost.

4.6.4. *White*

In *White* the Immigration Appeal Board held that there were two elements of section 24 of the Act: the departure from and the remaining outside of Canada, and the intent to abandon Canada as a place of permanent residence [*Minister of Employment and Immigration v. White*, Immigration App. Bd., Montréal, Doc. No. 80-1005, October 22, 1980]. In this case the board agreed with the adjudicator's decision and dismissed the Minister's appeal. First, Michelle White left Canada because she was forced to follow her father, and therefore her absence from Canada was fully explained. Second, her absence and delays in returning to Canada were not motivated by an intention on her part to abandon permanent residence in Canada. The appellant had returned to Canada temporarily on more than one occasion while completing her studies in Jamaica.

The board also approved of the notion that the words "residence" or "residing in Canada" should be given a liberal interpretation to further the stated objectives of the Act. Two fundamental elements essential to creating a residence are bodily residence in a place and the intention of remaining in that place. It added that neither bodily presence alone nor intention alone will suffice. Thus residence can only be changed by the union of fact and intent.

This case contains a very helpful review of many authorities dealing with the elements of A24.

4.6.5. *Selby*

The Federal Court—Appeal Division has upheld the IAD's jurisdiction to hear evidence and determine whether the appellant before it is a permanent resident. Thus the IAD has the jurisdiction to review a decision by the adjudicator that the person is no longer a permanent resident because he or she left or remained outside Canada with the intention of abandoning Canada as his or her place of residence. The IAD's jurisdiction applies whether or not A24(2) comes into play [*Minister of Employment and Immigration v. Selby*, FCA, Document No. A-593-79, September 16, 1981].

4.6.6. *Re Leung*

In *Re Leung* the Federal Court—Trial Division declared that when absences are for purely personal reasons and of a voluntary nature, they cannot be counted to fulfil the residence requirements of s. 5(1) of the *Citizenship Act* (s. 5(1)(c) requires that the permanent resident has not ceased to be a permanent resident under A24) [*Re Leung*, [1991] 13 Imm. L.R. (2d) 93 (F.C.T.D.)]. The decision to accept employment with the Hong Kong stock exchange for three years was said to constitute a voluntary absence from Canada. According to the court, the person concerned would have to cease having an ambivalent relationship with Canada, and would have to establish that her principal abode was in Canada by spending more time in Canada than in the Orient.

4.7 Action after decisions on
abandonment of residence

If you believe that a person seeking to come into Canada has abandoned Canada as his or her place of permanent residence, you should advise the person of your decision. You should also advise the person that a final determination of his or her status can only be made by an adjudicator at an inquiry.

4.8 Reports on persons claiming permanent resident status

If you conclude that the person left or remained outside Canada with the intention of abandoning Canada as his or her place of permanent residence, you must:

- report the person to a senior immigration officer (SIO) under A20(1) for A19(2)(d) for A9(1) and A24(1), and any other applicable ground of inadmissibility, or
- allow the person to leave Canada forthwith [A20(1)(b)], or
- admit the person as a visitor (see section 4.9 below).

Allowing a person to withdraw voluntarily or admitting the person as a visitor does not constitute a final determination that the person has ceased to be a permanent resident, nor does it constitute tacit acceptance of loss of status by the person concerned.

If you conclude that a person who claims to be a permanent resident has abandoned Canada, you should complete a report under A20(1). The person is seeking to come into Canada as a returning resident but in your opinion has ceased to be a permanent resident. The person is therefore presumed to be an immigrant [A8(2)], and is a member of the class of inadmissible persons described in A19(2)(d) because he or she has not complied with the requirement to be in possession of an immigrant visa [A9(1)].

For further information on writing an A20 report, see chapter PE 9, *A20 Reports and Voluntary Withdrawal*. You should not second-guess the adjudicator or the IAD. If you have grounds to believe that the person you are examining has ceased to be a permanent resident, you should write the report. However, to reflect the person's current status, it is recommended that the terms and conditions that you may impose in these circumstances should not prevent employment or study.

4.9 Entry as visitors

If a person accepts your opinion that he or she is not a permanent resident, you may allow the person to enter as a visitor. You *must* be satisfied that the person complies with *all* the requirements for admission as a visitor, including the requirement that the person must leave at the expiry of his or her visitor's status. You may impose the usual terms and conditions of entry. If you are not completely satisfied that the person meets the requirements for admission as a visitor, you must report the person under A19(1)(h) or A19(2)(d) for s. 13(4) of the *Immigration Regulations*, or another appropriate allegation.

If you allow entry as a visitor to a person who is in possession of a permanent resident document, you must document the person on a Visitor Record (form IMM 1442) generated on FOSS or, if FOSS is not available, completed by hand (form IMM 1097). You should create a port file, carefully documenting the reasons why you concluded that the person has lost status. You should not interpret these guidelines to mean that you have the authority to refer persons to inland offices for a determination of their status. You should make extensive notes, in case the person approaches an inland office for redetermination of his or her status.

You may also encounter cases where a permanent resident seeks entry to Canada as a visitor and does not wish to be assessed as a returning resident at that time. In such cases, providing the person meets all visitor requirements, you should document the person on a Visitor Record (IMM 1442 or IMM 1097) and create a file.

4.10 Right of appeal to the IAD

Permanent residents and holders of valid returning resident permits may appeal removal orders or conditional removal orders to the IAD on questions of law and fact, or mixed law and fact, and on the ground that "having regard to all the circumstances of the case" they should not be removed from Canada [A70(1)].

4.11 Persons described in A27(1)

If a permanent resident whom you believe to be described in A27(1) seeks to come into Canada as a returning resident, you should allow the person to come into Canada provided he or she has not abandoned Canada as his or her place of residence. You should obtain sufficient information concerning the person's intended place of residence to enable follow-up action.

You should consider recommending detention of a permanent resident described in A27(1) only when you can establish a strong and clearly identifiable threat to the public.

When a direction for inquiry and a warrant have been issued before a person arrives at the POE, you must arrest the person and immediately notify an SIO. You should request assistance from police officers where appropriate.

If you believe that the warrant is no longer necessary, you should contact an SIO (or any other appropriate person referred to in Instrument I-29) to request that the warrant be cancelled. If the request to cancel the warrant is refused or you cannot contact an appropriate official, you must execute the warrant. An SIO must then consider release.

When a direction is made but no warrant issued before the person arrives at the POE, you must notify an SIO. The SIO may issue a warrant for arrest under A103(1), or allow the person to come into Canada. Notify the appropriate inland CIC.

Section 127 of the Act ensures that those persons who have acquired and have not lost Canadian domicile under the 1952 Act cannot be pursued retroactively for past non-subversive, non-narcotic offences. However, you should counsel these persons that their domicile will not protect them against any offence committed under the present Act.

4.12 Seizing IMM 1000s and permanent resident cards

The Act empowers you to seize and hold any travel or other document that may be used for the purpose of determining whether a person may be granted admission or may come into Canada [A110(2)(b)]. Because the Immigrant Visa and Record of Landing (form IMM 1000) or the permanent resident card is documentary evidence of the grant of landing, you may use it to determine whether the holder may come into Canada. You may seize and hold it *temporarily* while you are making a determination of the holder's status and right to come into Canada.

You do not have the authority to retain a landing record or permanent resident card seized during examination unless you have reason to believe that the form or card was fraudulently issued or obtained, or was issued to someone other than the holder and thus is being fraudulently used. You may return documents seized under A110(2)(b) to the holder immediately if the person is granted admission or is allowed to come into Canada [*Immigration Regulations*, s. 49(1)(a)]. If an adjudicator has ruled that a person is not

4.13 Disposition of seized IMM 1000s and permanent resident cards

longer a permanent resident, however, under the authority conferred by A110(2)(c) you may retain a form or card seized under A110(2)(b) to prevent improper use of the form or card, even if you admit the person to Canada as a visitor [*Immigration Regulations*, s. 49(2)].

If you conclude that a person is no longer a permanent resident and prepare an A20(1) report, you may seize and retain the IMM 1000 form or permanent resident card until the inquiry has been concluded. If you conclude that the person has ceased to be a permanent resident but you allow a withdrawal or grant admission as a visitor, you may not confiscate the person's IMM 1000 or permanent resident card. If you form the opinion that a person has abandoned Canada as his or her place of residence and allow the person to leave, you should enter remarks in FOSS concerning the case.

If an adjudicator has ruled that a person has abandoned his or her permanent resident status and you have seized the IMM 1000 or permanent resident card, your office should retain the form or card until the case has been reviewed by the IAD. Your office should then forward the form or card to the Head, Query Response Centre, Program Data Directorate at National Headquarters; include a completed Confiscated or Voluntarily Surrendered CIICs or CIIRs (IMM 1000) form (IMM 1342; see APPENDIX C), indicating that the person was held by an adjudicator or the IAD to have abandoned Canada as his or her place of permanent residence. A permanent resident card is a Canadian Immigration Identity Card (CIIC), and an IMM 1000 is a Canadian Immigration Identity Record (CIIR).

You should remember that a voluntary surrender of an IMM 1000 or permanent resident card by a person will not withstand judicial scrutiny if, in any way, the person is coerced or surrenders his or her document under duress. For the procedure to be truly voluntary, the person must be fully aware of the consequences before surrendering the document.

4.14 Counselling returning residents

You should counsel returning residents on the following points:

- the procedures for applying for a returning resident permit if the person intends to leave Canada, and
- the intent of the deeming provisions in A24(2).

5. MINISTER'S PERMIT HOLDERS

A Minister's permit is a document issued by the Minister, using the discretionary authority given the Minister by A37(1). A Minister's permit allows an inadmissible or removable person to come into or remain in Canada when it is desirable on humanitarian or compassionate grounds or is in the public interest.

You must take care when you are examining a Minister's permit, because some permits are valid for re-entry into Canada while others do not grant this privilege [A14(1)(b)]. Under A37(4.1), only permits that allow a person to re-enter Canada have the rights accorded in A14(1)(b).

You should examine a Minister's permit to determine if:

- the permit is valid
- the name on the permit is the same as the name of the person you are examining, and
- the permit is valid for re-entry into Canada.

APPENDIX A
SAMPLE OF IMM 1228 (08-91) B - RETURNING RESIDENT PERMIT

 Employment and Immigration Canada Emploi et Immigration Canada				IMMIGRATION R 000 000 000	
Returning Resident Permit Permis de retour pour résident permanent					
					
Type of Case / Genre de cas					
Surname, Given Names / Nom de famille, prénoms					
Birth Date / Date de naissance D-J M Y-A		Country of Birth / Pays de naissance		Country of Citizenship / Citoyenneté	
Sex / Sexe 1 Male / Homme 2 Female / Femme		Marital Status / État matrimonial 1 Single / Célibataire 2 Married / Marié(e) 3 Widowed / Veuf (veuve) 4 Divorced / Divorcé(e) 5 Separated / Séparé(e)			
Date of Landing / Date de l'octroi du droit d'établissement D-J M Y-A		Place of Landing / Lieu de l'octroi du droit d'établissement		Serial No. of Landing Record / N° de série de la fiche relative au droit d'établissement	
Permanent Address in Canada / Adresse permanente au Canada					
Date of issue / Date de délivrance D-J M Y-A		Valid Until / Valable jusqu'à D-J M Y-A		Signature of Permit Holder / Signature du titulaire du permis	
Office of issue / Bureau qui a délivré le permis		Signature of Immigration Officer / Signature de l'agent d'immigration		Date D-J M Y-A	
Cost Recovery Code / Code de recouvrement des frais		Fee / Frais		GST / TPS	
Receipt No. / N° de reçu					
<p>If this permit expires a new permit may be applied for at any Canadian Visa Office abroad or any Immigration Centre in Canada. The validity of a returning resident permit shall not exceed twenty-four months; however, for any period exceeding twelve months the approval by a Senior Immigration Officer is required.</p> <p>Si la durée de validité du présent permis expire, le titulaire peut demander un nouveau permis à tout bureau canadien des visas à l'étranger ou à tout Centre d'immigration Canada. La durée de validité d'un permis de retour pour résident permanent ne doit pas dépasser vingt-quatre mois. Cependant, pour toute période supérieure à douze mois, l'approbation d'un agent d'immigration supérieure est exigée.</p>					
See back of this copy for Privacy statement. Voir l'énoncé portant sur la protection des renseignements personnels au verso de cette copie.					
Remarks / Observations (1)					
				Error / Erreur	
				Utilities / Lignes	

IMM 1228 (8-91) B

This form has been established by the Minister of Employment and Immigration
This document is the property of the Government of Canada

Formulaire établi par le Ministre de l'Emploi et de l'Immigration
Le présent document est la propriété du Gouvernement du Canada




Canada

HOLDER
TITULAIRE

1

APPENDIX B
SAMPLE OF IMM 1000 IP-P (3-89) B - IMMIGRANT VISA AND RECORD OF LANDING

 Employment and Immigration Canada Emploi et Immigration Canada IMMIGRANT VISA AND RECORD OF LANDING VISA D'IMMIGRANT ET FICHE RELATIVE AU DROIT D'ÉTABLISSEMENT		1a	
H.O. USE ONLY - RÉSERVÉ À L'ADMINISTRATION GÉNÉRALE		013	
01 3 1 03 04 IMMIGRANT IDENTIFICATION - IDENTIFICATION DE L'IMMIGRANT		1b	
2. SURNAME - NOM DE FAMILLE 223		4. NAME FLAG - INDICATEUR DU DROIT 277	
3. GIVEN NAMES - PRÉNOMS 263		7. COUNTRY OF BIRTH - PAYS DE NAISSANCE 110	
1. DATE OF BIRTH - DATE DE NAISSANCE 08 11 1981		5. PLACE OF BIRTH - LIEU DE NAISSANCE 122	
6. SEX - SEXE 1 MALE - HOMME 2 FEMALE - FEMME		8. MARITAL STATUS - ÉTAT CIVIL 1 SINGLE - CÉLIBATAIRE 2 MARRIED - MARIÉ 3 WIDOWED - VEUF (VEUVE) 4 DIVORCED (DORCÉE) - DIVORCÉ 5 SEPARATED - SÉPARÉ 6 DECEASED - DÉCÉDÉ	
9. CITIZEN OF - CITIZEN DE 124		11. PASSPORT NO. - PASSPORT N° 110	
12. IF APPLICABLE, COUNTRY OF ISSUE OF TRAVEL DOCUMENT PLS. FA LIEU D'ÉMISSION LE PAYS DE DÉLIVRANCE DU DOCUMENT DE VOYAGE		13. ACCOMPANYING FAMILY MEMBERS MEMBRES DE LA FAMILLE QUI ACCOMPAGNENT L'IMMIGRANT NAME - NOM DATE OF BIRTH - DATE DE NAISSANCE RELATIONSHIP - LIEN DE PARENTÉ	
14. FAMILY STATUS - SITUATION PAR RAPPORT À LA FAMILLE 1 PRINCIPAL APPLICANT - CANDIDAT PRINCIPAL 2 SPOUSE - ÉPOUXE 3 OTHER DEPENDANT - AUTRE DÉPENDANT 127		15. HAVE YOU ANY DEPENDANTS OTHER THAN THOSE LISTED ABOVE? OUTRE CELLES QUI SONT MENTIONNÉES CI-DESSUS, AVEZ-VOUS D'AUTRES DÉPENDANTS À VOTRE CHARGE? YES - OUI NO - NON	
16. FULL NAME, ADDRESS AND RELATIONSHIP OF PERSON WILLING TO ASSIST NOM ET ADRESSE AU LIEU DE LA PERSONNE DÉPOSÉE À OFFRIR SON AIDE ET LIEN DE PARENTÉ		17. SIGNATURE DATE	
18. INTENDED OCCUPATION - PROFESSION ENVISAGÉE 130		19. BIRTHDAY - ANNIVERSAIRE 138	
20. HAVE YOU EVER BEEN CONVICTED OF A CRIME OR AN OFFENCE, REFUSED ADMISSION TO CANADA, REQUIRED TO LEAVE CANADA, BEEN DEPORTED OR EXCLUDED FROM CANADA, OR BEEN DEPORTED FROM CANADA? AVEZ-VOUS JAMAIS ÉTÉ CONDAMNÉ À CAUSE D'UN CRIME OU D'UNE INFRACTION, REFUSÉ L'ADMISSION AU CANADA, DÉPORTÉ, EXCLUS DU CANADA, OU DÉPORTÉ DU CANADA?		21. SPECIAL PROC. - MOUVEMENT SPÉCIAL 145	
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42. REMARKS - OBSERVATIONS 201		217 W 019 910 925 228	

THIS FORM IS BEING ISSUED BY THE MINISTRY OF EMPLOYMENT AND IMMIGRATION
 CE DOCUMENT EST LA PROPRIÉTÉ DU GOUVERNEMENT DU CANADA

CE FORMULAIRE EST ÉMIS PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION
 LE PRÉSENT DOCUMENT EST LA PROPRIÉTÉ DU GOUVERNEMENT DU CANADA

IMM 1000 IP-P (3-89) B


Canada

PROGRAM DATA - N.H.Q.
 DONNÉES DU PROGRAMME - A.C. 1

APPENDIX C

SAMPLE OF IMM 1342 (10-88) B - CONFISCATED OR VOLUNTARILY SURRENDERED CIICs OR
CIIRs (IMM 1000)



Employment and Immigration Canada Emploi et Immigration Canada

CONFISCATED OR VOLUNTARILY SURRENDERED CIICs OR CIIRs (IMM. 1000)
CIC OU FIIC (IMM 1000) CONFISQUÉE OU REMISE LIBREMENT

TO: Head,
POUR: Query Response Centre
Program Data Directorate
Canada Employment & Immigration
Commission,

Chef,
Centre des demandes de renseignements
Direction des données du programme
Commission de l'emploi et de
l'immigration du Canada

Ottawa, Ontario K1A 0J9
Canada

Name of office Nom du bureau	File No. N° de référence
Date	

RE:
OBJET: _____
(Full name of person concerned — Nom au complet de la personne concernée)

Serial number of attached document (Where applicable)
Numéro de série du document ci-joint (s'il y a lieu)

PART I - CONFISCATED DOCUMENT — PARTIE I - DOCUMENT CONFISQUÉ	
The attached document was seized in accordance with paragraph 110(2)(c) of the Immigration Act, from the person named above who was deemed by <input type="checkbox"/> an adjudicator the Immigration Appeal Division at an inquiry/hearing held at _____ (place of inquiry/hearing)	En application de l'alinéa 110(2)c) de la Loi sur l'immigration, le document ci-joint a été retiré à la personne précitée, qui a été jugée par <input type="checkbox"/> un arbitre la section d'appel de l'immigration à une enquête/une audition tenue à _____ (lieu de l'enquête/de l'audition)
on _____ (date) to have abandoned Canada as his/her place of permanent residence.	le _____ (date) comme ayant renoncé à considérer le Canada comme lieu de sa résidence permanente.

PART II - VOLUNTARILY SURRENDERED DOCUMENT — PARTIE II - DOCUMENT REMIS LIBREMENT	
The attached document was voluntarily surrendered by the person named above at _____ (place) on _____ (date) Reasons for and method of surrender:	Le titulaire susmentionné a remis de son plein gré le document ci-joint à _____ (place) le _____ (date) Raisons de la remise du document et méthode utilisée:

**VOLUNTARY DECLARATION OF ABANDONMENT OF
PERMANENT RESIDENT STATUS**
I hereby declare that on or about _____
I will leave/ I left Canada with the intention of abandoning Canada as
my place of permanent residence.

**RENONCIATION AU STATUT DE RÉSIDENT PERMANENT -
DÉCLARATION VOLONTAIRE**
Par la présente, je déclare que je quitterai/ j'ai quitté définitivement le
le Canada le _____ ou vers cette date, car
j'entends renoncer au statut de résident permanent du Canada.

(Signature of person concerned)
(Signature de la personne concernée)

(Witness — Témoin)

Date

IMMIGRATION

Canada

Chapter PE 4

Examining Immigrants



DATE: ~~Sept 1998~~

NOT NEEDED AFTER: _____

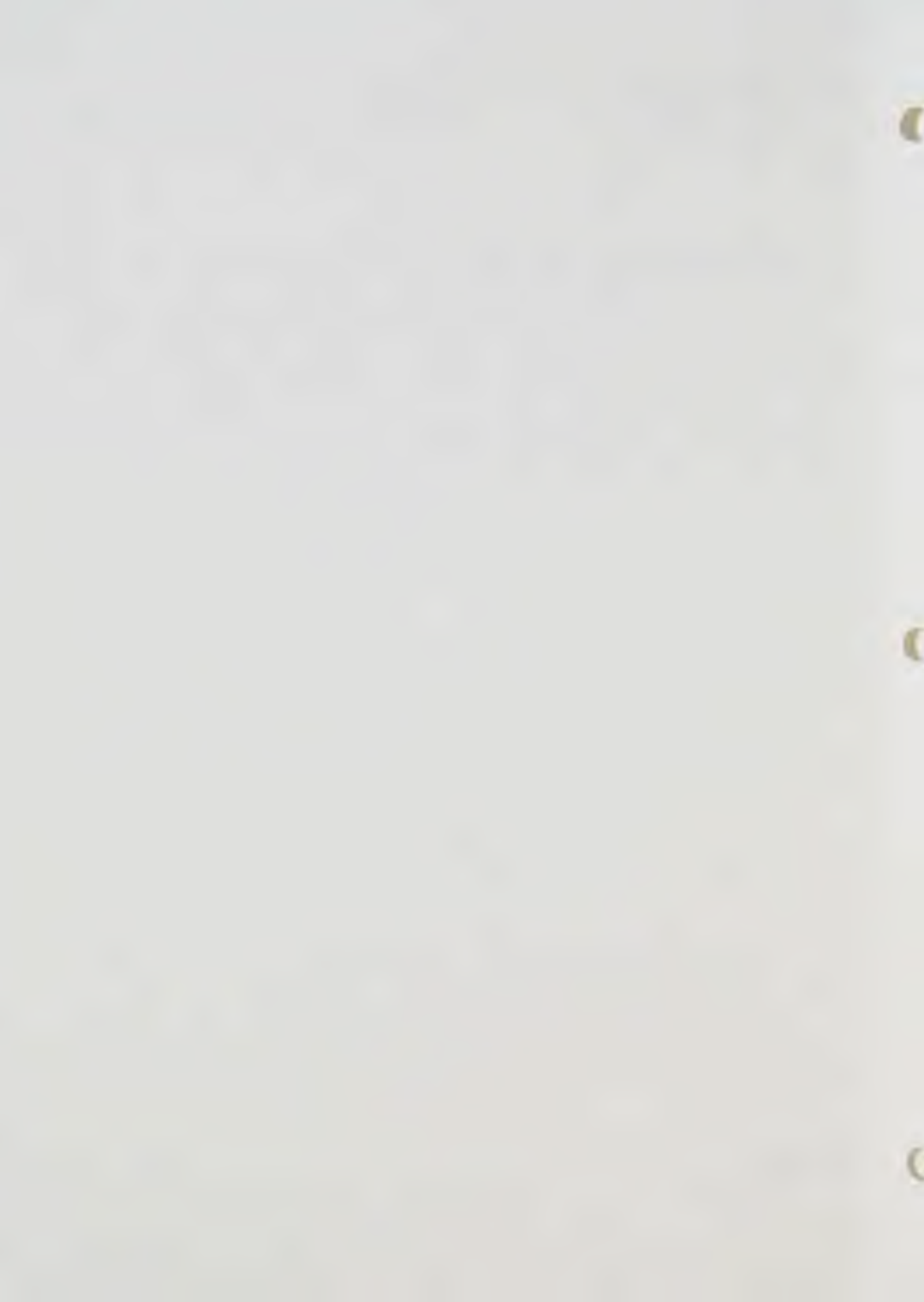
June 1998

RE:

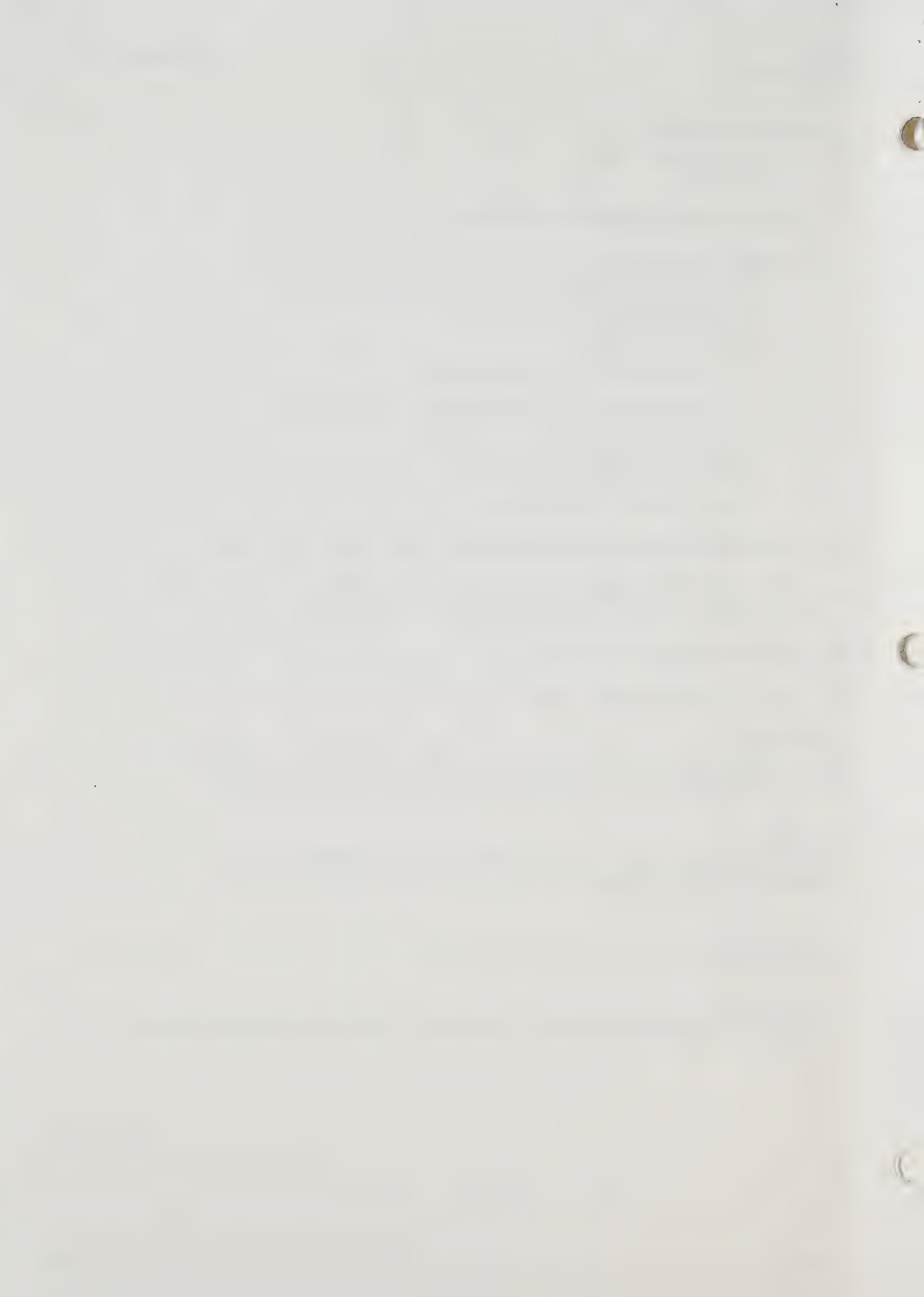
Chapter PK 4 missing large portions.
For a complete copy see:

Immigration Manual: Port of Entry LAW
(at Ben Laskin Law Library)
call # . KF 4483 I5 I555

SIGNATURE: _____



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- c) the entrepreneur shall furnish evidence of efforts to comply with these terms and conditions by:
- i) sending his or her Mail-in Card for Entrepreneurs (IMM 5215) to the department's Regional Business Immigration Coordinator of the province or territory in which he or she lives within the period between the entrepreneur's date of landing and six months from that date, and
 - ii) reporting to the nearest Canada Immigration Centre, or any other place or places specified in writing by an immigration officer, at least once within each of the following periods:
 - between 6 and 12 months from the entrepreneur's date of landing, and
 - between 12 and 18 months from the entrepreneur's date of landing, and
 - between 18 and 24 months from the entrepreneur's date of landing, and
 - iii) reporting to the nearest Canada Immigration Centre within a period of not more than two years after the date of landing to furnish evidence of compliance with the terms and conditions imposed.

The applicant must complete, sign and date both copies of the attachment in the section entitled *To be completed at the port of entry*, and sign at box 44 of the IMM 1000.

Have either the principal applicant or his or her spouse complete, sign and date the two copies of the attachment on behalf of each dependant under the age of 19.

Sign and date both copies of the attachment in the section entitled *To be completed at the port of entry*. Return one copy of the attachment to the applicant. Send the other copy, with a copy of the IMM 1000, to Program Data at National Headquarters.

When completed and signed the attachment becomes part of the applicant's landing documentation.

If the entrepreneur or any dependant does not have a second copy of the attachment, provide a photocopy and have the person complete, sign and date both copies in the section entitled *To be completed at the port of entry*.

Check with the entrepreneur to make sure that the visa office gave him or her a list of the department's Regional Business Immigration Coordinators, so that the entrepreneur knows where to send the Mail-in Card for Entrepreneurs (IMM 5215; see NO TAG). If the entrepreneur does not have this list of coordinators, give him or her a photocopy of the list in IR 2 table titled **Regional Business Immigration Coordinators**, and if he or she does not have a mail-in card, issue an IMM 5215.

For entrepreneurs and their dependants who received their immigrant visas before January 31, 1993, and who report to a POE for landing on that date or later, you must amend the terms and conditions issued by the visa officer by issuing a new Attachment to Record of landing with the terms and conditions outlined in ss. 23.1(1)(a), 23.1(1)(b) to 23.1(1)(c) and 23.1(1)(d) of the *Immigration Regulations*. For each entrepreneur and dependant you then must:

- provide two copies of the Attachment to Record of Landing

- have the applicants complete, sign and date both copies
- sign and date both copies yourself
- give one copy of the completed, signed and dated attachment to the applicant
- send the second copy of the attachment to Program Data at National Headquarters, and
- void the original attachment issued at the visa office.

You must give a mail-in card to the entrepreneur so that he or she can respect the condition imposed by section (c)(i) of the attachment to the record of landing. You will also have to change the coding and the wording of box 43 of the IMM 1000 to reflect the terms and conditions described below.

For all principal applicants and dependants, enter one of the following codes in box 43 of the IMM 1000:

Code 70 — The terms and conditions provided for in paragraphs 23.1(1)(a) to (d) of the *Immigration Regulations, 1978*, as set out in the attachment of this form

or

Code 72 — The terms and conditions provided for in paragraphs 23.1(1)(a) to (d) and 23(1)(a) of the *Immigration Regulations, 1978*, as set out in the attachment of this form.

APPENDIX E
REGIONAL BUSINESS IMMIGRATION COORDINATORS

BRITISH COLUMBIA AND YUKON	QUEBEC
<p>Al Thiessen Manager Recruitment & Selection/Settlement Employment and Immigration 1055 West Georgia Street Royal Center P.O. Box 1114 Vancouver, British Columbia V6E 3P8 Tel.: (604) 666-8563 Fax: (604) 666-1927</p>	<p>Jean - Guy Patenaude Program Specialist Employment and Immigration 1441 St.-Urbain Street, 8th Floor Montreal, Quebec H2X 2M6 Tel.: (514) 283-4574 Fax: (514) 496-2060</p>
ALBERTA AND NORTHWEST TERRITORIES	NOVA SCOTIA
<p>Doug Haaland Program Specialist, Admissions Immigration Directorate Employment and Immigration Canada Place, Suite 1440, 9700 Jasper Avenue Edmonton, Alberta T5J 4C1 Tel.: (403) 495-4110 Fax: (403) 495-5451</p>	<p>Frank Dunham Chief, Enforcement Employment and Immigration P.O. Box 1350 Metropolitan Place, 5th Floor Dartmouth, Nova Scotia B2X 4B9 Tel.: (902) 426-2906 Fax: (902) 426-8724</p>
SASKATCHEWAN	NEWFOUNDLAND
<p>Leo Marchand Immigration Directorate Employment and Immigration 2101 Scarth Street, Room 710 Regina, Saskatchewan S4P 2H9 Tel.: (306) 780-6531 Fax: (306) 780-5275</p>	<p>Ron Rowsell Chief, Operations Employment and Immigration 67 Kenmount Road P.O. Box 12051 St. John's, Newfoundland A1B 3Z4 Tel.: (709) 772-5924 Fax: (709) 772-2934</p>
MANITOBA	PRINCE EDWARD ISLAND
<p>Ann Morrell Employment and Immigration 259 Portage Avenue, 5th Floor Winnipeg, Manitoba R3B 3L4 Tel.: (204) 983-2428 Fax: (204) 983-2867</p>	<p>Marita Dunning Employment and Immigration 85 Fitzroy Street P.O. Box 8000 Charlottetown, P.E.I. C1A 8K1 Tel.: (902) 566-7736 Fax: (902) 566-8355</p>

ONTARIO	NEW BRUNSWICK
<p>Joe Carelli Program Specialist Employment and Immigration 4900 Yonge Street, North Willowdale, Ontario M2N 6A8 Tel.: (416) 224-4866 Fax: (416) 224-7969</p>	<p>Bob Moore Recruitment and Selection/Settlement Employment and Immigration 975 Hanwell Road P.O. Box 2600 Fredericton, New Brunswick E3B 5V6 Tel.: (506) 452-3711 Fax: (506) 452-2404</p>

IMMIGRATION

Canada

Chapter PE 5

**Processing Student
Authorizations**





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Processing Student Authorizations

Abbreviations and Short Forms

A	<i>Immigration Act</i>
ACISI	Advisory Committee on International Students & Immigration
CAQ	Certificat d'Acceptation du Québec
CAIPS	Computer Assisted Information Processing System
CIC	Citizenship and Immigration Canada
CICs	Canada Immigration Centres
CIDA	Canadian International Development Agency
CPCs	Case Processing Centres
CPCV	Case Processing Centre, Vegreville
CSQ	Certificat de Sélection du Québec
DFAIT	Department of Foreign Affairs & International Trade
FOSS	Field Operations Support System
IMM 1249	Student Application Form in Canada
IMM 1294	Student Application Form Abroad
IMM 1208	Student Authorization Form generated by non – CAIPS visa offices
IMM 1442	Student Authorization Form generated by FOSS.
MRCIQ	Ministère des Relations des Citoyens et de l'Immigration du Québec
POE	Port of Entry
R	<i>Immigration Regulations</i>
SIQ	Service de l'Immigration du Québec
VEC	Validation Exempt Code

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1. LEGISLATIVE AUTHORITY AND POLICY DIRECTION

STUDENT AUTHORIZATIONS LEGISLATIVE AUTHORITY

Immigration Act

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Immigration Act Fees Regulations

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1.1 The Act

1.1.1 Immigration objectives

A3 It is hereby declared that Canadian immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada, recognizing the need

(e) to facilitate the entry of visitors into Canada for the purpose of fostering trade and commerce, tourism, cultural and scientific activities and international understanding.

1.1.2 Applications by students

A10 Except in such cases as are prescribed, every person, other than a Canadian citizen or a permanent resident, who seeks to come into Canada for the purpose of

(a) attending any university or college authorized by statute or charter to confer degrees,

<p>1.1.3 No application in certain circumstances</p> <p>1.1.4 Authority to make regulations</p> <p>1.2 The Regulations</p> <p>1.2.1 Definition</p> <p>1.2.2 Requirement to be in possession of a student authorization</p> <p>1.2.3 Where authorization not required</p>	<p>(b) taking any academic, professional or vocational training course at any university, college or other institution not described in paragraph (a),</p> <p>shall make an application to a visa officer for and obtain authorization to come into Canada for that purpose before the person appears at a port of entry.</p> <p>A17.1 Except in such cases as are prescribed, no person in Canada may make an application to an immigration officer to obtain authorization</p> <p>(a) to attend any university or college or take any academic, professional or vocational training course.</p> <p>A114(1) The Governor in Council may make regulations</p> <p>(h) prescribing the maximum duration of student and employment authorizations.</p> <p>R2(1) In these Regulations, "student authorization" means a document issued by an immigration officer whereby the person to whom it is issued is authorized</p> <p>(a) to attend a university or college authorized by statute or charter to confer degrees, or</p> <p>(b) to take an academic, professional or vocational training course at a university, college or other institution not described in paragraph (a).</p> <p>R13(4) Every visitor who is required to obtain a visa, student authorization or employment authorization before he appears at a port of entry shall be in possession of a valid visa, student authorization or employment authorization, as the case may be, when he appears at a port of entry.</p> <p>R14.1 Subject to sections 14.2 and 14.3, no person, other than a Canadian citizen or a permanent resident, shall attend any university or college or take any academic, professional or vocational training course in Canada unless that person possesses a valid subsisting student authorization.</p> <p>R14.2 Section 14.1 does not apply to a person who seeks to come into Canada for the purpose of attending a university or college, or taking an academic, professional or vocational training course or a person in Canada who is attending or seeks to attend a university or college or is taking or seeks to take an academic, professional or vocational training course if</p> <p>(a) the person is the dependant of any diplomatic or consular officer, representative or official, properly accredited, of a country other than Canada or of the United Nations or any of its agencies or of any</p>
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intergovernmental organization of which Canada is a member who is coming into or is in Canada to carry out official duties or any member of the staff of that officer, representative or official, or

(b) the sole course taken or to be taken is a French or English language training course that is three months or less in duration.

R14.3(1) There shall be exempt from the requirement to obtain a student authorization, for any of the purposes referred to in section 14.1, any person

(a) who was in Canada on January 1, 1989 or had, prior to that date, been directed to return to the United States pursuant to subsection 23(5) of the Act to await the availability of an adjudicator to preside at an inquiry to be held on or after that date; and

(b) whose intention to make a claim to be a Convention refugee was signified by the person before January 1, 1989, to

(i) an immigration officer, who recorded that intention before that date, or a person acting on an immigration officer's behalf, who an immigration officer is satisfied recorded that intention before that date, or

(ii) an adjudicator in the course of an inquiry respecting the person's status in Canada.

R14.3(2) No exemption under subsection (1) applies to a person who

(a) has been determined to be a Convention refugee under the Act as it read before January 1, 1989;

(b) is the subject of a removal order or a departure order and has not been removed from, or has not otherwise left, Canada;

(c) has failed to appear for

(i) completion, pursuant to paragraph 12(3)(a) of the Act, of an examination,

(ii) an inquiry respecting that person's status in Canada, or for the continuation of such an inquiry, where the person was given an appointment therefor, or

(iii) an examination under oath with respect to the person's claim to be a Convention refugee, or for the continuation of such an examination, where the person was given an appointment therefor; or

(d) is described in paragraph 19(1)(c), (e), (g) or (j) or 27(2)(c) of the Act.

R14.3(3) There shall be exempt from the requirement to obtain a student authorization, for any of the purposes referred to in section 14.1, any person who is a dependant of a person exempt under subsection (1).

1.2.4 Documents to accompany application for student authorization

R15(1) Every application for a student authorization shall be accompanied by

(a) a letter from a university, college or other institution referred to in paragraph 10(a) or (b) of the Act accepting the applicant to attend or to take any specified course at the university, college or other institution;

1.2.5 Exemptions from certain documentation

(b) sufficient documentation to enable an immigration officer to satisfy himself that the applicant has sufficient financial resources available to him, without engaging in employment in Canada,

(i) to pay his tuition fees,

(ii) to maintain himself and any dependants who will come into Canada during the period for which he seeks a student authorization, and

(iii) to pay the transportation costs to and from Canada for himself and any dependants referred to in subparagraph (ii); and

(c) the consent in writing of the government of the province in which the applicant wishes to study where such consent is required by that government pursuant to an agreement entered into by the Minister with that government pursuant to section 108 of the Act.

R15(1.01) Paragraphs (1) (a) and (b) do not apply in respect of an application to attend a primary or secondary school that is submitted by a dependant of a holder of a student authorization or employment authorization.

R15(1.1) Subparagraph 15(1)(b)(ii) does not apply in respect of an application submitted by

(a) a person whose claim to Convention refugee status has been referred to the Refugee Division pursuant to subsection 46.02(2) or 46.03(5) of the Act, as amended by S.C. 1988, c.35, section 14; or

(b) a dependant of a person referred to in paragraph (a).

1.2.6 Where authorization not required before arriving at Port of Entry

R15(2) A person who seeks to come into Canada for a purpose referred to in paragraph 10(a) or (b) of the Act is not required to obtain a student authorization before that person appears at a port of entry if that person is a dependant of

(a) [Revoked SOR/89-38]

(b) a member of the armed forces of a country that is a designated state for the purposes of the Visiting Forces Act who is coming to or is in Canada in order to carry out his official duties, including a person who has been designated as a civilian component of that visiting force;

(c) a clergyman or member of a religious order coming to or in Canada for the temporary carrying out of his religious duties;

(d) an employee of a foreign news company coming to or in Canada for the purpose of reporting on Canadian events;

(e) a person coming to or in Canada to engage in athletic or other sport activities or events as a player, manager, coach, trainer or administrative employee for a Canadian-based team, group or organization or a person engaged as a referee, umpire or other similar official with respect to any athletic or other sport activity or event in Canada;

(f) a person in possession of a valid and subsisting student authorization;

1.2.7 Where application for authorization may be made in Canada

- (g) a person in possession of a valid and subsisting employment authorization; or
- (h) a representative of a foreign government sent by that government to take up duties with a federal or provincial agency pursuant to an exchange agreement with Canada.

R15(3) A person who seeks to come into Canada for a purpose referred to in paragraph 10(a) or (b) of the Act is not required to obtain a student authorization before that person appears at a port of entry if that person is

- (a) a national of the United States;
- (b) a person who has been lawfully admitted to the United States for permanent residence;
- (c) a resident of Greenland;
- (d) a resident of St. Pierre and Miquelon; or
- (e) a person whose application for a student authorization has been approved in writing by a visa officer but to whom the authorization has not been issued.

R16(1) A person in Canada may make an application for the purpose of obtaining a student authorization

- (a) if that person is
 - (i) a person referred to in subsection 15(2);
 - (ii) a person in possession of a valid and subsisting student authorization;
 - (iii) a person in possession of a permit issued by the Minister under section 37 of the Act or a dependant of that person,
 - (iv) a person whose claim to Convention refugee status has been referred to the Refugee Division but the claim has not been finally determined,
 - (v) a dependant of a person referred to in subparagraph (iv), or
 - (vi) a person referred to in paragraph 15(3)(e);
- (b) where the taking of the course for the purpose of which he makes an application for a student authorization would only be incidental and secondary to the main purpose of his presence in Canada; or
- (c) if that person has been authorized to remain in Canada as a visitor pursuant to subsection 17(2.1) of the Act and was in possession of a valid and subsisting student authorization at the time the person ceased to be a visitor.

1.2.8 Course criteria

R17(1) A student authorization may not be obtained by any person for the purpose of taking any academic, professional or vocational training course unless that course

- (a) is of at least six months duration and at the rate of at least twenty-four hours of instruction per week;
- (b) is given at any institution described in paragraph 10(a) of the Act or any other publicly-funded institution;

1.2.9 Prescribed Institutions

- (c) is recommended by a minister of the Government of Canada, other than the Minister of Employment and Immigration, or by a minister of the government of any province or by any agency of the Government of Canada or the government of any province;
- (d) is incidental and secondary to the main purpose of that person's presence in Canada; or
- (e) involves upgrading of skills or language training and is given at an institution that operates under a provincial or federal licence.

R17(2) No visitor may be granted entry for the purpose of taking any academic, professional or vocational training course at any university, college or other institution listed in Schedule III.

Schedule III Three institutions are listed for which no visitor are to be granted entry:

- General Welding School, 61 Jarvis Street, Toronto
- Radvis University, Charlottetown, PEI
- The Way College of Biblical Research, London, ON

1.2.10 Terms and Conditions

R23(3) Where an immigration officer, senior immigration officer or adjudicator may impose conditions under the Act in respect of a visitor, the only terms and conditions that may be imposed are the following:

- (a) a prohibition against engaging in employment in Canada;
- (b) a prohibition against attending any university, college or other institution and against taking any academic, professional or vocational training course at any university, college or other institution;
- (c) attendance at a university, college or other institution specified by the immigration officer, senior immigration officer or adjudicator;
- (h) the period in which the visitor may remain in Canada;
- (i) the area within which the visitor may travel in Canada;
- (k) The times and places at which the visitor shall report for medical examination, surveillance or treatment or for any other purpose;
- (m) a prohibition against attending any university, college or other institution listed in Schedule III and against taking any academic, professional or vocational training course at any university, college or other institution listed in that Schedule.

1.3 Fees Regulations

1.3.1 Processing fee payable by

R7(1) The fee prescribed in Column III of the schedule (namely \$125) is payable, at the time an application for a student authorization is made.

1.3.2 Exemptions from processing fee

R7(2) The following persons need not pay the fee:

- (a) a person described in paragraph 5(2)(a), (b), (c) or (m), namely 5(2)(a) a person in Canada who has made a claim to be a Convention refugee that has not yet been decided by the Refugee Division and any dependant of the person;

5(2)(b) a person whom the Refugee Division has determined to be a Convention refugee and any dependant of the person;

5(2)(c) a person whom a visa officer has determined to be a Convention refugee seeking resettlement and any dependant of the person;

5(2)(m) an officer of the United States Immigration and Naturalization Service or of the United States Customs carrying out pre-inspection duties, an American member of the International Joint Commission, a United States grain inspector or any other United States Government official in possession of an official United States Government passport and assigned to a temporary posting in Canada, and their dependants.

(b) a member of a class of persons designated by the Governor in Council pursuant to subsection A6(3) and paragraph A114(1)(d), and their dependants;

(c) a person described in paragraph 3(2)(a) and their dependants, namely

3(2)(a) a properly accredited diplomat, consular officer, representative or official of a country, other than Canada, of the United Nations or any of its agencies, or of any intergovernmental organization in which Canada participates, or a member of the suite of any such person and their dependants;

(d) a person described in paragraph 3(2)(b) and their dependants, namely

3(2)(b) a member of the armed forces of a country that is a designated state for the purposes of the *Visiting Forces Act*, including a person who has been designated as a civilian component of that visiting force pursuant to paragraph 4(c) of that Act, and their dependants;

(e) a dependant, studying at the secondary school level or lower, of a person described in paragraph 3(2)(c), namely

3(2)(c) a clergyman, a member of a religious order or a lay person who is to assist a congregation or a group in the achievement of its spiritual goals where the duties to be performed by the person are to consist mainly of preaching doctrine, presiding at liturgical functions or spiritual counselling, and their dependants;

(f) a student who is seeking renewal of the student authorization and who has become temporarily destitute through circumstances totally beyond their control or the control of any person on whom the student is dependent for financial resources; and

(g) a person who is in or coming into Canada, under an agreement between Canada and a foreign country or an arrangement entered into with a foreign country by the Government of Canada that provides for reciprocity of student exchange programs.

1.4 Policy direction

1.4.1 An issue of competitiveness

Foreign students are considered a growth industry for Canada, as they are for the rest of the industrialized world. CIC is committed to putting in place guidelines and procedures which will streamline program management and simplify processing for foreign students choosing Canada for their educational pursuits.

	<p>Canada is facing strong competition from countries such as the United States, Australia, the U.K. and others, who have adopted aggressive recruitment techniques in their search for a larger share of foreign students. Many other countries have been successful in securing a larger share of the foreign academic talent that is helping diversify their economies and boost their educational systems.</p> <p>With government cutbacks and declining enrollment, foreign students represent a vital link in helping maintain a strong educational infrastructure for Canadians. Much progress has been made, but we are still lagging behind in our quest to attract foreign students in greater numbers.</p>
1.4.2 Some statistics	<p>In 1990–91, there were 1.5 million foreign students at the post secondary level around the world. Of these, Canada received approximately 3%. In 1995, the 77,600 foreign students studying in Canada generated \$2.3 billion in economic activity and 21,000 jobs. That same year, posts abroad issued close to 30,000 student authorizations, roughly half to post secondary students.</p>
1.4.3 Administration	<p>At NHQ, the Economic Policy & Programs Division, Selection Branch, is responsible for the Foreign Student program. Branch responsibilities encompass a wide spectrum from policy development, to program management, procedural guidelines, monitoring functions, stakeholder consultations and customer service.</p>
1.4.4 Stakeholders	<p>In an effort to make the consultation process more systematic and improve our ability to carefully monitor our policies and programs, the Branch established a formal Advisory Committee on International Students and Immigration. The Committee includes core representation from government and non–government organizations, and access to a wide range of interest groups which are called upon to participate in discussions on any number of issues. Committee membership is listed at the end of this Chapter.</p>
1.4.5 Committee on International Students and Immigration: Mandate	<p>The Committee is chaired by the Director of Economic Policy and Programs, and meets twice a year to exchange information, review current issues and resolve difficulties. The Committee's mandate has been formulated as follows:</p> <ul style="list-style-type: none"> ● To monitor and discuss issues relating to international students and their dependents, including those enrolled in commercial, technical education and training programs; ● to make suggestions to CIC on issues affecting international students and their dependents; ● to maintain contact with committee members between meetings to resolve urgent issues; ● to monitor and discuss issues concerning other foreign nationals visiting Canada for research, education or practical training purposes.

1.4.6 Important progress has been made

This consultation process has helped spur important changes to immigration requirements which will streamline our programs and simplify our procedures. Among the most important...

- we have eliminated the need for letters of acceptance from school for dependents of holders of student and employment authorizations;
- we have eliminated the requirement for employment authorizations for university and community college students to work on campus;
- we have simplified financial sufficiency requirements for students and their dependants;
- we have reinforced our commitment to issuing long-term student authorizations;
- we have put forward a standard content for letters of acceptance;
- we have reached an understanding on the use of conditional letters of acceptance.

1.4.7 Immigration one of several important partners in international education

Immigration is only one of several competing factors affecting the manner in which foreign students are attracted to Canada. First and foremost is the quality and affordability of education, coupled with our economic environment and quality of life.

Although we have made good progress, there is still a strong perception that immigration is an impediment, that there are too many inconsistencies in our approaches, and that requirements are too demanding and unnecessarily complicated.

Part of the competitiveness problem lies in the fact that Canada lacks a cohesive national policy on international students. There are many separate stakeholders with many different interests. It is recognized that all stakeholders have a role to play in improving our competitive position, and that efforts need to be made right across the board, from forging a cohesive policy approach, to improving marketing strategies, to speeding up processing of applications.

CIC is a significant partner in this respect, and there are important things that we can and must continue to do. CIC's partnership with the Advisory Committee will continue to be an important aspect of this policy and program development function.

1.4.8 Setting the tone for ongoing program refinements and simplified processing

Last but not least, with the publication of this chapter, CIC has provided clear policy direction and processing guidelines which should help attain a higher level of consistency in the manner in which we are managing our foreign student programs. This chapter will be updated periodically to reflect changes and continuing improvements in this respect.

Hopefully, these improvements will assist officers in their day-to-day management of cases, and set the tone for further refinements of our procedures which will ultimately help boost Canada's competitive position.

1.4.9 Membership Advisory
Committee on International
Students and Immigration

GOVERNMENT

Canadian International Development Agency
Citizenship & Immigration Canada (Chair)
Department of Foreign Affairs & International
Trade
Industry Canada
Council of Ministers of Education, Canada
Association of Canadian Community Colleges

NON-GOVERN-
MENT

Association of Universities & Colleges of
Canada
Canadian Association of University Teachers
Canadian Association of Graduate Studies
Canadian Bureau of International Education
National Association of Career Colleges
One national student group: Canadian
Federation of Students

INVITED PARTICI-
PANTS

Asia-Pacific Foundation

Canadian Alliance of Student Associations
Canadian School Boards Association
World University Services of Canada
Association of Canadian Bible Colleges
British Columbia Centre for International
Education
Canadian Association of Independent Schools
Canadian Information Centre for International
Credentials
Canadian Education Association
Conférence des recteurs et des principaux des
universités du Québec
Fédération des conseillères et des conseillers
scolaires francophones
Federation of Independent Schools in Canada
Organisation universitaire interaméricaine
Inter-American Organization for Higher
Education

2. SPECIAL CONSIDERATIONS AND REQUIREMENTS

2.1 Quebec program

2.1.1 Canada–Québec Immigration Agreement

Under the terms of Article 22 of the Canada–Québec Immigration Agreement, Québec's consent is required in order to admit any foreign student to the Province, except a student chosen under a Canadian government assistance program for developing countries, such as those administered by CIDA.

2.1.2 Formal consultations

Ongoing consultations with the Province of Québec are formalized under the terms of Articles 9 and 10 of the Canada–Québec Immigration which require the establishment of the Implementation Committee, co–chaired by a representative designated by both provincial and federal Ministers. The Committee, which is required to meet formally at least twice a year, also includes formal representation from the Department of Foreign Affairs and International Trade.

2.1.3 Québec's selection mechanism

The Province utilizes a Certificat d'Acceptation du Québec, as its selection mechanism for foreign students. With exemptions listed below, all applicants for student authorizations destined to a Québec educational institution at the primary, secondary, college or university level must be in possession of a "Certificat d'acceptation du Québec" (CAQ) before being eligible for a student authorization.

2.1.4 How students obtain a CAQ

If the country where the applicant is living is served by the Quebec Immigration Service, the student must apply there for a CAQ. Otherwise, students should apply for their CAQ at the Regional office of the Ministère des Relations avec Citoyens et de l'Immigration du Québec (MRCIQ) that serves the educational institution which the student will be attending.

Québec authorities will forward copies of relevant CAQs to posts abroad or otherwise confirm issuance of CAQs by telex or other means.

Students who are allowed to apply at a Port of Entry and who do not possess a CAQ are usually given a three–month permit during which time they must apply for a CAQ from the Regional office of the Ministère des Relations avec Citoyens et de l'Immigration du Québec (MRCIQ) that serves the educational institution which the students will be attending. Once a CAQ is issued, these students must apply for an extension of their status through the CPC in Vegreville.

2.1.5 Students exempt from a CAQ

The following persons do not require a CAQ to study in Québec:

- a) students chosen under a Canadian government funded program for developing countries;
- b) dependants of diplomats accredited to Canada;

	<p>c) students enrolled in a part-time course of study of less than 20 hours per week;</p> <p>d) students enrolled in intensive French or English courses of at least 20 hours per week, for a maximum period of twelve weeks;</p> <p>e) students with a valid Certificat de Sélection du Québec who have been authorized by CIC to apply for landed immigrant status from within Canada or who have applied for an immigrant visa through a visa office.</p>
2.1.6 Countries served by MRCIQ	<p>The Service d'Immigration du Québec has offices in the following countries:</p> <p>Vienna, Austria Brussels, Belgium Paris, France Hong Kong Damascus, Syria</p>
2.1.7 Requests for information	<p>The educational institution which the student will be attending should fully inform applicants about the procedures that apply in Quebec.</p> <p>Alternatively, students requiring information should contact the MRCIQ Information Service in Montreal by phoning (514) 864-9191. This Office is not served by fax.</p>
2.2 Privacy Legislation	
2.2.1 Releasing information	<p>The Student Application Form includes a notation that the information provided will be protected under the <i>Privacy Act</i>.</p> <p>Privacy legislation requires that information concerning clients be released only to the client. The information can be released to the client's designated representative only upon the client's written approval.</p> <p>Consequently, representations should be dealt with either in person or by mail. Information should be given out over the phone only if the caller can be positively identified as either the client or the client's authorized representative.</p>
2.2.2 Dealing with third party representatives	<p>Foreign student advisers should be viewed by officers as legitimate and trustworthy service partners, and their concerns should be responded to promptly, within applicable service standards.</p> <p>In all cases, requirements of the <i>Privacy Act</i> apply. In cases where there is no written approval from the client on the disclosure of information to such third party representative, an adviser's questions should be noted, general requirements explained, and officers should make a commitment to respond to concerns directly to the applicant.</p>
2.2.3 Programs funded by CIDA and DFAIT	<p>Students coming forward under special programs funded by CIDA or DFAIT are required to sign an appropriate form consenting to the release of information to the sponsoring agency. The main purpose of this</p>

requirement is to ensure that the sponsoring agency can be contacted when such students and/or their dependants apply for permanent residence or refugee status rather than returning home once their period of study is concluded.

The main objective of these programs is to ensure that such students acquire special knowledge or training in various fields which will be beneficial to a developing country's economy or social fabric once they return. It is, therefore, imperative that these agencies be contacted if the agreement to return home is breached.

Officers should refer to section 2.5 for detailed instructions in this respect.

2.3 Cost recovery

2.3.1 Legislation

For exact legislative reference, please refer to section 1.2 of this chapter, or section 7, *Immigration Act Fees Regulations*.

2.3.2 Fees payable

Manual users should refer to the Schedule of the *Immigration Act Fees Regulations* to verify that current fees are still applicable.

Currently, processing fees applicable to student authorizations are set at \$125.00.

2.3.3 Method of Payment

Fees are payable at the time application is made, and should be included with the written application. Depending on local operating conditions, fees may be payable by cash in Canadian, American or local currency at the rate of exchange set by the Mission; Visa or MasterCard; certified cheque or international money order in Canadian funds only payable to the Receiver General for Canada.

2.3.4 Exemptions

The following persons are exempt from paying the processing fee:

- a) persons who have been determined to be Convention refugees or members of a designated class prior to their arrival in Canada, and their dependants;
- b) persons in Canada whose claim to be Convention refugees has not yet been decided by the Refugee Division, and their dependants;
- c) Diplomats accredited to Canada, consular officers, representatives or officials of a foreign country, and their dependants;
- d) dependants of persons who are employed by Canadian charitable institutions, or dependants of persons who are employed as a clergyman, a member of a religious order or a lay person to assist a congregation in its spiritual goals where the duties to be performed by that person consist mainly of preaching doctrine, spiritual counselling, when such dependants are studying at the secondary level or below;
- e) students seeking renewal of their student authorization who have become temporarily destitute through circumstances totally beyond their control or the control of any person on whom they are dependent for financial resources;
- f) members of a visiting force within the meaning of the *Visiting Forces Act*, and their dependants;
- g) a person who is in Canada or who is coming into Canada under an agreement between Canada and a foreign country or an arrangement entered into with a foreign country by the Government of Canada that provides for reciprocal educational opportunities.

2.4 Prescribed institutions**2.4.1 Legislation**

R17(2) requires that no visitor may be granted entry for the purpose of taking any academic, professional or vocational training course at any university, college or other institution listed in Schedule III. This Schedule currently lists three institutions for which no visitors are to be granted entry:

- General Welding School, 61 Jarvis Street, Toronto
- Radvis University, Charlottetown, P.E.I.
- The Way College of Biblical Research, London, Ontario

2.4.2 Making a recommendation to prescribe an institution

CIC has the authority to prescribe educational institutions which may be engaged in unethical recruitment or dubious business practices or which, in other ways, exploit potentially vulnerable foreign students. Students applying to these institutions should not be granted a student authorization.

When such institutions are drawn to their attention, Regional Directors of Immigration should investigate any allegations and advise CIC NHQ of any institution which they consider warrants inclusion in Schedule III, outlining their reasons for this recommendation.

2.4.3 Factors to be considered in prescribing an institution

Following are some of the factors which should be considered in making an assessment on the need to prescribe an institution:

- a) whether the courses of study meet the requirements of R17(1)(a) specifying that these be of at least six months duration and at the rate of at least twenty-four hours of instruction per week;
- b) whether the institution is registered in accordance with provincial legislation. Institutions not meeting this basic requirement should be recommended for prescription;
- c) whether the institution operates in accordance with provincial legislation and concerns, especially as they relate to the refund of tuition fees, finances and advertising;
- d) whether the institution has been involved in misrepresentation of any description in areas such as advertising or promotion overseas regarding the existence, level or quality of its courses; the transferability of credits earned; the availability and quality of any accommodation provided; the quality of facilities and instructional materials; the credentials of staff; its general operations in Canada. Institutions whose facilities are so poor that they are incapable of keeping students for the duration of the course of study should be considered suspect;
- e) whether any evidence of mind-abuse practices, para-military training or harassment of present or former students exists. Allegations of this type should be investigated and reported on a priority basis.

In exceptional cases, depending on the relative "weight" or severity of the criterion, the existence of only one factor may provide adequate grounds for recommending that an educational institution be prescribed. Generally, however, it will be the existence of a number of factors which leads to such a decision.

2.4.4 Sources of information

Comments or reaction of visa officers and officials in countries where recruitment is undertaken, of CIC officials, immigration officers and CIC stakeholders should also be taken into consideration and form part of a recommendation to prescribe an institution. Other useful sources of information could include current and former students, current and former teaching staff and media or other investigative reports.

2.5 Government funded programs and exchange programs

2.5.1 Government Funded Programs

The Canadian International Development Agency (CIDA) and the Department of Foreign Affairs & International Trade (DFAIT) fund a number of special programs to enable deserving foreign students to undertake university-level studies or research fellowships in Canada, as well as short-term specialized training.

2.5.2 Objective

Students coming forward under these special programs receive funds to cover their transportation, tuition, medical and living expenses. The primary objective of these programs is that students will be able to apply the knowledge, education and training they have acquired in Canada to the benefit of their own countries.

An essential aspect of these programs, therefore, requires the students to return home shortly following their period of study in Canada or the termination of the award. Since the primary objective of the program will not have been met, sponsoring agencies have made a policy decision to cease funding in cases where such change of status occurs.

2.5.3 Assessment criteria

Because of special sponsorship and funding arrangements, it can be assumed that students sponsored by CIDA and DFAIT meet the requirements relating to acceptance, institution, course of study, language and transportation. Sponsorship also indicates that sufficient funds are available for single students. Students with spouse and dependants must have additional funds in accordance with the formula outlined in sections 3.3.4 and 3.3.5. Background inquiries and medical examinations are also in order.

2.5.4 CIDA Programs

The Canadian International Development Agency (CIDA) supports the efforts of the peoples of developing countries to achieve self-sustainable economic and social development by cooperating with them in development activities. An example of such programs is those administered by the World University Services of Canada.

One of the means by which CIDA achieves this objective is by funding a number of scholarship programs allowing students from developing countries to pursue university-level studies in Canada for degree-level programs, for research fellowships, or for short term specialized training.

Students receive bursaries to pursue advanced studies in a number of disciplines where knowledge gained will benefit their country's economies. Examples of such disciplines include management and administration,

2.5.5 Processing CIDA applications

engineering and technology, agriculture, computer studies, ocean management and environmental protection, education, health and nutrition.

Scholarships are awarded to deserving students with high academic standings, good motivational skills and strong potential for significant future contributions to their country following their course of study in Canada. Students are carefully chosen based on a competitive basis, open only to those who agree to come to Canada as visitors. Applicants must make a contractual commitment with CIDA to return to their country of origin upon completion of their study program, so that they may contribute towards the development of their country.

a) Administration

The administration of all CIDA programs is delegated to various Executing Agencies such as private sector companies, universities, public organizations or embassies of recipient countries.

Usually, CIDA representatives overseas counsel sponsored students before their arrival in Canada. In some cases, CIDA delegates this task to a fellowship coordinator or an Executing Agency representative.

b) Inquiries

Any inquiries regarding program, policy and case related issues should be addressed to:

Canadian International Development Agency
Canadian Partnership Branch
200 Promenade du Portage
Hull, Québec K1A 0G4
Tel.: (819) 997-5435
Fax: (819) 997-0513

Any inquiries regarding processing procedures should be addressed to CIC Economic Policy and Programs Division, (SSE).

c) Identification Code

Officers will identify CIDA students or trainees with Code 599 on the student authorization. In addition, where a visa is issued, the notation "CIDA Student" must be included underneath the visa.

d) Validity period

Students entering Canada under programs sponsored by CIDA should be issued student authorizations on a year to year basis.

e) Refusals

When a CIDA student is found inadmissible, officers will report the case to the local CIDA representative or to the CIDA NHQ/Trainees and Awards Section noted above.

f) Change of status

CIDA students are required to return to their country of residence once their study program is completed. As a requirement of admission, CIDA has included a Consent to Release Information in its Form 656: Agreement with Respect to Training In Canada. When a CIDA sponsored student, or his/her dependants, make an application

2.5.6 DFAIT Programs

to change their status from student to permanent resident or submit a refugee claim, officers should contact CIDA to request a copy of the individual Consent to Release Information Form. Once this form is received, officers should advise CIDA of the application for change of status.

CIC will then proceed to assess individual cases in the usual manner.

The Department of Foreign Affairs and International Trade funds two programs for foreign students:

THE COMMONWEALTH SCHOLARSHIP & FELLOWSHIP PLAN

This Program is designed to provide opportunities for students of other Commonwealth countries to pursue advanced programs in Canada. The Scholarships are tenable at Canadian universities, and are intended for men and women of high intellectual promise who may be expected to make a significant contribution to their own countries on their return from study in Canada.

Scholarships are awarded for studies at the master's and doctoral levels. Awards for a Master's degree are made for two academic years and the intervening summer, except in cases where a shorter period is required. The maximum tenure of an award for a doctoral degree is four calendar years, except in cases where a shorter period is required. Doctoral research scholarships, whereby individuals enrolled in a doctoral program at a university in their home country or a third country can undertake research in Canada, are tenable for no less than a semester and for a maximum of ten months.

The continuance of all awards from year to year is conditional upon the satisfactory progress and conduct of the holder. Award holders are expected to return to their respective countries at the end of their study program.

GOVERNMENT OF CANADA AWARDS

Under this program of academic exchanges, DFAIT offers awards on an annual basis to nationals of various countries. Although the list may vary, these countries currently include France, Germany, Italy, Japan and Mexico.

These awards are intended to enable foreign nationals of high academic standing to undertake graduate studies or post-doctoral research in Canadian institutions. Awards may be applied to research or studies in all areas of the arts, the social sciences and humanities, the natural sciences and engineering.

All applications are judged on a competitive basis. The final selection is made on the basis of the academic or artistic merits of the applicant and the justification for carrying out the proposed program of study or research in Canada.

Candidates who have obtained or plan to obtain landed immigrant status in Canada are not eligible. Award holders are expected to return to their respective countries at the end of tenure or study program.

2.5.7 Processing DFAIT Applications

a) Administration

The International Council for Canadian Studies (ICCS) administers both The Commonwealth Scholarship and Fellowship Plan and the Government of Canada Awards Program, under contract with DFAIT.

b) Inquiries

Any inquiries regarding program or policy should be addressed to:

International Academic Relations Division (ICE)
Foreign Affairs and International Trade
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Tel.: 613/996-1014
Fax: 613/992-5965

Any inquiries regarding case related issues should be addressed to:

International Council for Canadian Studies
325 Dalhousie Street, Suite 800
Ottawa, Ontario K1N 7G2
Tel.: 613/789-7828
Fax: 613/789-7830

Any inquiries regarding processing procedures should be addressed to
CIC Economic Policy and Programs Division (SSE).

c) Identification Code

Commonwealth Scholarship and Fellowship Plan Students will be identified by Code 506 on the student authorization. In addition, where a visitor visa is issued, the notation "CSFP Student" will be written underneath the visa.

No special identification code is required for the Government of Canada Awards to Foreign Nationals Program.

d) Validity Period

At visa offices, CSFP Students will initially be issued student authorizations valid for one year. On renewal in Canada, the student authorization may be made valid for the tenure of the award.

Students under the Government of Canada Awards program are usually sponsored for one year. Their authorization should correspond to the duration of the award.

e) Refusals

When a DFAIT-sponsored student is found inadmissible, officers will report the case to ICCS.

f) Change of status

DFAIT-sponsored students are required to return to their country of residence once their study program is completed. ICCS, on behalf of DFAIT, has undertaken to obtain written consent from each student to release personal information to ICCS. When a DFAIT-sponsored student, or his/her dependents, make an application to change status from student to permanent resident or submits a refugee claim, immigration officers will contact ICCS to request a copy of the Consent to Release Information Form. Once the form is received, ICCS should be advised of the application for change of status.

CIC will then proceed to deal with the individual cases in the usual manner.

2.5.8 Exchange Programs

A number of exchange programs are sponsored by private organizations which enable foreign students to attend Canadian schools and be hosted by Canadian families, and vice versa. In most cases, these students do not

2.5.9 Rotary Exchange Students

require authorizations since their length of stay is usually two to three weeks, and attendance at school is not the primary purpose of the exchange. Other programs, however, such as the Rotary International Youth Exchange Program noted below, will require an authorization.

The Rotary International Youth Exchange Program has been operational since the mid-1920s. It involves approximately 10,000 participants ranging in age from 15 to 18. Students live with Rotary families throughout the year, and are financially supported by hosting Rotary Clubs.

The Program requires students to attend school for one year, and includes sponsored events over the summer months after completion of the academic year.

2.6 Student employment

2.6.1 Exemptions Reference Table (see APPENDIX A)

The Exemptions Reference Table in APPENDIX A lists exemptions to employment authorizations and to validation requirements which apply to foreign students.

Briefly, under the terms of R19(1)(x), full time students registered in a degree-granting course are allowed to work on the campus of the institution at which they are registered without the need for an employment authorization.

Several other categories of students are exempt from validation but must be issued an employment authorization.

These exemptions are listed clearly on the table in APPENDIX A. Subsequent sections in this Chapter provide pertinent definitions and details of such exemptions.

2.6.2 On Campus employment: exempt from authorization

Under the terms of R19(1)(x), full time students registered in a degree-granting course are allowed to work on the campus of the institution at which they are registered without the need for an employment authorization.

This exemption applies to students engaged in full-time studies at a university, community college, CEGEP, publicly funded trade/technical school or private institution authorized by provincial statute to confer degrees. Students registered in part-time courses do not qualify.

This exemption applies to students working at any number of jobs on campus, as well as students working as graduate, research or teaching assistants at facilities off campus in research related to their research grant. These facilities could include teaching hospitals, clinics, research institutes, etc., which have a formal association or affiliation with the learning institution.

a) Legislative reference

R18(1)

Subject to subsections 19(1) to (2.2), no person, other than a Canadian citizen or permanent resident, shall engage or continue in employment in Canada without a valid and subsisting employment authorization.

R19(1)

Subsection 18(1) does not apply to a person who seeks to come into Canada for the purpose of engaging in employment or a person in Canada who seeks to engage or continue in employment

R19(1)(x)

as a person who holds a student authorization and who, during the period that the person is a full-time student at the local campus of a university or college, is employed on that campus.

b) Definition of on campus

“On campus” is defined as employment facilities within the boundaries of the campus. The students are only allowed to work on the campus of the educational institution at which they are registered.

If an institution has more than one campus, the student can work at different locations on that campus provided it is within the same municipality. If an institution has campuses in different cities, the student is restricted to the institution’s campus where he/she is registered.

There will be cases of students working on campus as graduate, teaching or research assistants. In certain circumstances, the work to be performed will require the student to be located at a library, hospital or research facility affiliated with the institution but located outside the physical limitations of the institution’s campus. This is allowable, provided that the research being conducted is strictly related to the student’s research grant.

c) Definition of employer

The employer can be the institution, faculty, student organization, private business, or private contractor providing services to the institution on the campus.

Some universities located in city centres have campus grounds widely dispersed among general populated areas. This definition includes such employers whose businesses serve the general consuming public, insofar as the place of business is technically located on the university campus.

d) Eligibility

To be eligible for employment on campus the student must:

- i) be in possession of a valid and subsisting student authorization;
- ii) be registered in a degree/diploma-granting course of study at an approved institution [A10(a)];
- iii) be registered at the educational institution as a full-time student;
- iv) work on campus at the institution to which they are registered, whether for the institution itself or for a private business located on campus.

In addition, students working as graduate assistants, teaching assistants or research assistants will be considered to be within the scope of “on campus” employment provided:

- i) the student has been recommended by officials of his/her department;
- ii) the work to be performed is directed by a department head or a faculty member; and

2.6.3 Destitute students – VE Code C05

iii) the work takes place in a research institute or program in an affiliated hospital or research unit.

e) Notation on student authorization

In the case of students exempt from employment authorization, officers should include the following notation on the student authorization:

May accept employment on the campus of the institution at which the holder is registered in full-time studies.

Due to circumstances beyond their control, foreign students already in Canada sometimes find themselves completely cut off from finances on which they had been counting for their day-to-day needs, as well as for their tuition. While academic institutions do grant some leeway insofar as tuition and residence fees may be concerned, there is no source of relief for the subsistence of destitute students unless they can help themselves through employment. These students should be granted employment authorizations exempt from validation, under Code C05.

a) Eligibility

Each case should be considered on its own merit. Some cases will be self-evident such as cases of war, upheaval in home country, collapse of the banking system, etc., while others will require further explanation by the applicant, usually at an interview with an immigration officer.

Once such students have been able to establish their destitute circumstances to the satisfaction of an immigration officer, such students should be issued employment authorizations without employment validation.

b) Validity

The employment authorization is to be issued to coincide with the duration of the current term of study, not for the duration of the entire course nor for the duration of the student authorization.

2.6.4 CIDA students – VE Code D30

This validation exemption applies to students sponsored by CIDA when the intended employment is part of the student's program as arranged by CIDA.

2.6.5 Employment integral part of course – VE Code D35

This validation exemption applies to foreign students whose intended employment forms an essential and integral part of their course of study in Canada, and whose employment has been certified as such by a responsible academic official of the training institution. This exemption does not apply to:

- medical interns and externs, resident physicians (except those in veterinary medicine);
- students of accountancy (except those who are in Canada under the terms of the Memorandum of Understanding between Canada and Malaysia).

In cases such as these, the letter provided by the educational institution should establish clearly that the work is a normal component of the academic program which all participants are expected to complete in order to receive their degree, diploma or certificate. The most commonplace example would be undergraduate co-op programs at universities and colleges.

a) Career colleges or language schools

Some students attending career colleges or language schools may also be eligible under this exemption, if there is a work practicum component to their study program. Some of the common elements to look for when these students apply under D35 include:

- i) written evidence from the school that a work component is required for successful completion of the course of study. Such evidence may be in the form of a letter from the school, or a copy of the school's curriculum;
- ii) details of the work to be performed. Normally, the work will be supervised, and involve a specific number of hours per term or semester. The work may be unpaid at times. The school should be in a position to name the businesses or types of businesses involved in this kind of study/work program.

b) High school students

The Province of British Columbia requires all high school students in grades 11 and 12 to obtain work experience in order to graduate. This requirement applies to students at all institutions authorized by the Ministry of Education to grant high school diplomas, whether a private or public institution.

In these cases, the employer is the school or school district, the location of employment is British Columbia and the employment is open.

Although it has been indicated to BC school authorities that the school should provide a letter to this effect, such is not imperative. If an officer knows for certain that the student is registered at the Grade 11 and/or 12 levels in BC, an employment authorization concurrent with the student authorization should be granted under exemption D35.

2.6.6 Spouses of students – VE
Code E07

Spouses of foreign students are allowed to accept employment in the general labour market without the need for validation. This exemption is intended for spouses who are not themselves full-time students.

a) Eligibility

Applicants must provide evidence that they are

- i) the spouse of a holder of a student authorization who is attending a post-secondary institution on a full-time basis, or
- ii) the spouse of a person who has a valid employment authorization to work at a job related to the course of study, after graduation (under Code E08 following).

Spouses of full-time students are eligible for open or open/restricted employment authorizations, depending on whether or not a medical examination has been passed. There is no need for an offer of employment before issuing an employment authorization.

2.6.7 Employment following graduation – VE Code E08

b) Validity

Employment authorizations can be issued with a validity date to coincide with the spouse's student authorization, including the period of time the spouse is entitled to work after graduation (under Code E08 following).

Students may accept education-related employment for a maximum period of one year following successful completion of their studies, without the need for validation.

a) Eligibility

The following criteria apply:

- i) the student must have graduated from a program at a post-secondary institution described in A10(a);
- ii) the student must still be in possession of a valid student authorization;
- iii) the employment must be consistent with the recently completed course of study; and
- iv) the employment must commence within 60 days of issuance of marks;
- v) the student must not have been formerly issued an employment authorization under this exemption following any other course of study.

b) Assessment

The policy of post-graduation employment was developed to benefit students in a meaningful way, by enabling them to acquire practical business skills in the Canadian context and undertake an activity consistent with their recently completed course of study.

In the majority of cases, the assessment of eligibility will be fairly straightforward. Where the student's eligibility is not clear to the officer, the test to be applied relates to the following:

- i) does the employment require the level of training the student has achieved?
- ii) is the employment of a type for which graduates at the same level of study would normally be recruited?

If the a relationship can be established and the answers weigh in favour of the client, officers should not hesitate to approve the request.

c) Validity

Employment under E08 is limited to a cumulative and concurrent period of one year in duration only. This is a one-time validation exemption which cannot be used again following the completion of any subsequent courses of study. Extensions beyond one year will require validation.

2.6.8 Scholarship students petitioned by a university – VE Code E30

This exemption applies to foreign students who are the subject of a petition by a Canadian university or college on the basis that the student was accepted by the institution on an academic or athletic scholarship and

2.6.9 International student and young workers – Code VE35

whom, in the opinion of the institution and the Director of Immigration, it would be in the best interests of all concerned to permit to take employment arranged by the institution.

There are a number of International Student and Young Worker Employment Programs which qualify under validation exemption. These programs are usually based on reciprocity and exchanges with a number of countries. Authorizations can be issued for between 1 to 18 months, depending on the type of program.

The employment can be open or employer specific. When issuing an “open” employment authorization, an occupation restriction must be specified if the applicant has not passed an immigration medical. Once the applicant has completed the medical requirement, the term and condition can be removed.

Programs which qualify for this exemption and the various conditions and eligibility requirements which apply are outlined in the Table at APPENDIX B which is set out alphabetically by program, and APPENDIX C set out alphabetically by country.

2.7 Minor students

The regulations make no distinction between minor students and those who are of the age of majority. There are, however, issues related to minor students, particularly those who plan to enter Canada unaccompanied, which distinguish these applicants from those destined to institutions at the post-secondary level.

Education, health, community and social services and guardianship are matters of provincial jurisdiction. Following consultations with the provinces and territories, a cohesive approach to the processing of minor students has been developed. One common theme which emerged from the consultations is that the recruitment of foreign students, even at the primary and secondary levels, provides an important economic and cultural contribution to all provinces and territories. These benefits must be tempered, however, with a corresponding vigilance for the protection and well-being of the minor.

2.7.1 Guardianship/Custodianship

Legal guardianship is an expensive and lengthy procedure in most jurisdictions, and is likely to be granted only where the minor is an orphan or is a ward of the province/territory. For the purposes of a student authorization application, therefore, the term custodianship is more appropriate.

Under A19(1)(b), before they issue any document, visa officers must be satisfied that adequate arrangements are in place for the care and support of those who are unable to support themselves. The onus is on the applicant to satisfy the assessing officer that the terms of section 19(1)(b) are met.

To satisfy section 19(1)(b), all applicants must supply proof in the form of notarized declarations, one signed by the parent or legal guardian in the country of origin, as well as one signed by the custodian in Canada, stating that arrangements have been made for the custodian to act in place of a parent in times of emergency, as when immediate medical attention or intervention is required.

A broader notarized declaration may fulfil the section 19(1)(b) requirement in all cases. It would state that a Canadian citizen or permanent resident of at least 19 years of age is prepared to act in place of the parent. In the case of a child attending a boarding school, this declaration may be signed by the principal.

The visa officer may require the broader notarized declaration depending on the age of the child. A very young student, for example, would need someone to step into the shoes of the parent. A student near the age of majority might only need someone to act in place of the parent in the event of an emergency.

2.7.2 Health Insurance

Not all provinces and territories extend public health insurance benefits to foreign students. At the time of writing, only Saskatchewan and the Northwest Territories extend immediate coverage to foreign students. BC, Alberta and Nova Scotia do extend coverage, although after various waiting periods. No other jurisdiction extends benefits; therefore, applicants must be counselled as to the advisability of obtaining private insurance prior to arrival in Canada; for Québec—destined students, insurance may be a pre-condition to the issuance of the CAQ. Officers should note clearly on the file or in casenotes that the applicant was indeed provided with this information. Alternatively, application kits should include a notice to this effect. In the absence of a regulatory obligation, issuance of the authorization should not be held pending proof of private health insurance coverage.

2.7.3 Fees

Section R15.(1)(b)(i) clearly states only that the onus is on the applicant to demonstrate that he/she has sufficient financial resources available to him/her for payment of tuition fees once in Canada. Tuition fees vary between jurisdictions, and may be as high as \$10,000. Student authorizations may not, therefore, be refused to minors who do not present proof of payment of tuition fees. A student authorization may not, however, be issued unless the applicant provides a letter of acceptance from the appropriate educational authorities. The onus, therefore, is on the provinces, and not on CIC officers, to ensure their school boards and divisions include provisions for the payment of fees as a pre-condition to the issuance of acceptance letters.

2.7.4 Bona Fides

As indicated above, there is no distinction in law between minor students and those who are of the age of majority. Bona fides of all students must be assessed on an individual basis; refusals of non-bona fide students may only withstand legal challenge when the refusal is based on the information related to the specific case before the officer. Therefore, while cultural context or historical migration patterns of a client group may be a contributing factor to the decision-making process, they alone are not valid, legally tenable grounds for refusal on bona fides. If officers wish to take into account outside information, particularly where that information leads to concerns/doubts about the applicant's bona fides, they must be able to show that the applicant was made aware of the information taken into account and/or the concerns and was given an opportunity to address those concerns. The onus, as always, remains on the applicant to satisfy the assessing officer that s/he is not an intending immigrant, that s/he is a bona fide visitor who will leave Canada following

the completion of his/her studies pursuant to section A9(1.2). Refusals on these grounds should cite this particular section of the Act and not those found under section A8(2).

It is recommended that a copy of the refusal letter be kept on file, whether as a hard copy or in an electronic format in the event of legal challenge.

2.7.5 Document Issuance

Officers are reminded that student authorizations for minors are not to be institution or jurisdiction specific, but that they are to be issued with a validity not in excess of 12 months. Exceptions to this are:

- a) dependents of persons who have been issued long-term authorizations (visitor, student, worker). the validity must not exceed that of the document issued to the head of the family, and;
- b) other deserving situations, such as students from the United States having no other option but to attend school in Canada and where there is no objection from the receiving school district (i.e.: Americans from Hydar, Alaska attending school in Stewart, B.C.).

Inland offices are reminded that, when processing requests for extensions for students in the province of Québec, no new CAQ is required if the program of studies will be completed in a period of less than 12 months.

3. GENERAL ELIGIBILITY CRITERIA

3.1 Where clients apply

3.1.1 Legislative requirement to apply abroad

A10 requires that all visitors intending to study in Canada apply for and obtain a student authorization prior to arrival at a port of entry. The Act stipulates that:

A10 Except in such cases as are prescribed, every person, other than a Canadian citizen or a permanent resident who seeks to come into Canada for the purpose of

- (a) attending any university or college authorized by statute or charter to confer degrees;
- (b) taking any academic, professional or vocational training course at any university, college or other institution not described in paragraph (a);

shall make an application to a visa officer for and obtain authorization to come into Canada for that purpose.

3.1.2 Exemptions

For details of exemptions, please refer to APPENDIX D. As outlined, exemptions to the requirement to apply abroad fall into four broad categories:

- 15(2) persons who are not required to obtain a student authorization before arriving at a Port of Entry;
- 15(3) persons whose application can be processed at a Port of Entry;
- 16 persons who may apply from within Canada; and
- 14.2 persons exempt from the need for a student authorization. Detailed instructions on this category are contained in section 3.1.3.

3.1.3 Persons exempt from student authorizations

Special provisions apply to dependants of diplomats, visitors attending short-term language courses, and persons who intend to enrol in courses of studies that are not academic, professional or vocational in nature.

Pre-schoolers

Pre-school children who attend day-care centres, nursery schools and kindergarten classes below the Grade 1 level do not fall within the provisions of A10(b) and do not, therefore, require student authorizations.

a) Dependants of diplomats

All persons (except persons holding diplomatic, official, special or service passports from Turkey) coming to Canada on posting, including their families, will be in possession of diplomatic or official visas.

Entry is initially authorized for a period of six months. During this period, the passport is forwarded by the person's embassy or consulate to the Office of Protocol of the Department of Foreign Affairs and

International Trade (DFAIT). The Office of Protocol will issue a diplomatic (D), consular (C), official (J) or international (I) acceptance counterfoil to the person's passport indicating that the person is accredited to Canada and entitled to remain in Canada for the duration of status.

Dependants of diplomatic personnel or members of their staff who wish to attend courses and who possess the acceptance counterfoil obtained from the Office of Protocol do not require a student authorization.

Children under 19

Dependent children of diplomats, consular officers, representatives or officials who are under 19 years of age are considered to be members of the family forming part of the household will be issued acceptances. They do not require a student authorization.

Children over 19

Children over the age of 19 are only issued acceptances if they are registered as full-time students. After 25 years of age, dependants are no longer eligible to receive official acceptances, and must change their official status to regular immigration status. Children over 25 years of age who are full-time students may obtain visitor status with permission to study, if they qualify as dependent children under Immigration Regulations. They are exempt from having to obtain student authorizations.

For information

Questions related to diplomats, consular officers, representatives and officials of foreign missions in Canada should be addressed through National Headquarters to the Office of Protocol, Foreign Affairs, Ottawa, Ontario K1A 0G2. In cases of urgency, contact the Immigration Advisor at the Office of Protocol at (613) 995-5957.

b) Visitors attending short-term language courses

Visitors may enter Canada or remain in Canada without a student authorization to attend a French or English language training course of three months' duration or less. The three-month criterion was established after negotiations with the provinces who have responsibility for education.

There have been instances where persons coming on short-term language courses are registered in a course for periods longer than three months, but have been seeking to enter Canada as visitors under this exemption. The three-month timeframe must be adhered to and anyone seeking to follow a course of longer duration requires a student authorization.

To be eligible under this provision, the course duration does not have to be consecutive, but can be an accumulation of time adding up to three months.

Visitors wishing to continue language training beyond the three-month period or those wishing to enrol in other educational programs must leave Canada and obtain student authorizations in the normal manner.

- c) Persons who intend to enrol in courses of studies that are not academic, professional or vocational

The Act does not require student authorizations for persons who intend to enrol in courses of studies that are not academic, professional or vocational in nature.

Academic, professional or vocational training does not include short-term, self-improvement or general-interest courses. Usually, these courses do not have a formal curriculum or a formal examination and do not grant official credit towards a degree or diploma.

Although some of the skills learned in these courses might prove useful in the workplace, they are not primarily directed toward career training. Such courses may be offered, among others, by local school boards in continuing education or as a hobby, self-improvement or life-skills courses, and can range from flower arranging and cake decorating to auto mechanics, typing and language courses.

3.2 Letters of acceptance

3.2.1 Legislative requirement

For the exact legislative reference related to letters of acceptance, officers should refer to section 1.2 of this chapter, or to A10(a) and (b) and R15(1)(a).

Generally speaking, the regulations specify that every application for a student authorization shall be accompanied by a letter of acceptance or proof of registration from the educational institution which the student will be attending.

3.2.2 Exemptions

Dependents of holders of student and employment authorizations do not require letters of acceptance. [R15(1.01)].

Because of special sponsorship arrangements, it can be assumed that students sponsored by CIDA and DFAIT meet the requirements relating to acceptance, institution, course of study, and language.

3.2.3 Conditional letters of acceptance

There may be cases when students produce conditional letters of acceptance indicating that the student will be allowed to register at the institution. Visa officers are to treat conditional letters of acceptance as meeting the requirements of R15(1)(a), except where there is serious doubt that registration will be allowed.

Processing should not be delayed, and student authorizations should be issued without advance fulfilment of conditions. The onus is on the institution to specify clearly any condition which is important enough to warrant denial of registration should the condition not be fulfilled. Similarly, the onus is on the student to satisfy the institution in advance that any such important condition has been fulfilled.

Long-term validity

Students with conditional letters of acceptance should also benefit from long-term authorizations, unless there are grave concerns that the conditions cannot be met.

3.2.4 Standard Letters of Acceptance

Students can establish acceptance to a course of study by showing officers a letter of acceptance from the educational institution which they will be attending.

3.2.5 List of items required in Letters of Acceptance

In order to facilitate the processing of applications for student authorizations and reduce delays due to incomplete information, CIC in cooperation with the Advisory Committee on International Students and Immigration, has devised a list of standard items which should be included in all letters of acceptance issued to potential international students.

The following list of items should be included in all letters of acceptance from educational institutions, submitted by students at the time of their application:

- Full name, date of and mailing address of student.
- The course of study for which the student has been accepted.
- The estimated duration or date of completion of the course.
- Date on which the selected course of study begins.
- The last date on which a student may register for a selected course.
- The academic year of study which the student will be entering.
- Whether the course of study is full-time or part-time.
- The tuition fee.
- Any conditions related to the acceptance or registration, such as academic prerequisites, completion of a previous degree, proof of language competence, etc...
- Clear identification of the educational institution, normally confirmed through the letterhead.
- Where applicable, licensing information for private institutions, normally confirmed through letterhead.

3.2.6 Criteria related to course of study

The following criteria apply to all institutions except privately funded institutions in British Columbia which are governed by provincial statute under the Post-Private Secondary Education Act, administered by the Post-Private Secondary Education Commission (PPSEC). In B.C., unlike other provinces, a privately-funded institution registered under PPSEC meets the criteria of R17 regardless of specifications outlined below.

The letter of acceptance from the educational institution must show that the applicant will be pursuing a course of studies which meets at least one of the following criteria, as specified in R17(1)(a) to (e):

- a) The course of study is at least six months in duration and involves at least 24 hours of instruction per week. The following factors may be included in calculating the 24 hours per week: laboratory time, library time, and outside work or other assignments that can be considered an integral part of a course of study and study time.
- b) The course of study is given by a chartered college or university or by any other publicly funded institution.
- c) The course of study is recommended by any department or agency of the government of Canada, or by a department or agency of the government of any province. Federal and provincial government departments or agencies can accept foreign students for specific courses that they may offer from time to time, such as the RCM Police course.

- d) The course of study is incidental and secondary to the applicant's main purpose for being in Canada. Accompanying spouses may fall into this category. Such courses can include any full-time or part-time course given at any recognized institution, so long as taking the course will not become the primary reason for the person being in Canada. For example, if a person said that he or she was coming to Canada for four months during which time that person may take a two or three-week summer course, officers should consider the course as incidental to the person's prime purpose. If the person were to say that he or she was coming for four months and would be seeking to take a full-time course for that period, officers should not consider the course incidental to the applicant's prime purpose.
- e) The course of study involves upgrading of skills or language training and is given at an institution that operates under a provincial or federal licence. Upgrading of skills is intended to apply to those persons who already have a basic ability which they want to develop further, or those who might require some language training either for itself or to enable the student to meet language requirements to enter university or college.

3.2.7 General application of criteria related to course of study

CIC expects that the provisions of a) and b) above will be the standards governing studies in most cases.

There will be cases, such as those in c), d) and e), where the time and institutional standards will not apply, but where officers should consider the person to be a student for the purposes of the authorization.

Courses taken under b), c), d) or e) may be part-time and may be less than six months' duration.

3.2.8 When applicants have to meet conditions of enrolment

If an educational institution issues a letter of acceptance subject to certain conditions such as payment of fees, the achievement of certain academic standards or completion of a previous degree, the institution considers that the applicant will fulfil the conditions of enrolment. It is not the responsibility of the visa or immigration officer to ensure that the applicant complies before issuing an authorization. The onus is on the institution. Processing should proceed and authorizations should be issued without advance fulfilment of conditions.

3.2.9 Applicant's knowledge of English or French

There may be cases where officers feel that a student's lack of English or French will make it extremely difficult for that student to follow the desired course of studies.

Nevertheless, since chartered universities or colleges either require minimum pass marks on a language test before offering admission, or have structures in place to upgrade language skills, the apparent lack of language ability in students destined to one of these institutions should not be a concern. If officers have serious doubts, and where the educational institution has issued a letter of acceptance, officers may contact the geographic desk at NHQ.

3.2.10 When Letters of Acceptance are incomplete

Officers at NHQ will verify the status of the case with the institution and inform the visa office accordingly. If the institution maintains the acceptance despite the officer's observations, NHQ will advise the visa office to proceed with the application.

In rare cases where it seems clear that the lack of English or French will make it extremely difficult for a student to pursue a desired course of study, officers may want to discourage that student from pursuing an application for a student authorization. Otherwise, officers should proceed as directed above.

3.2.11 Letters of Acceptance from prescribed institutions

Through the Advisory Committee on International Students and Immigration, CIC has made educational institutions aware that information on all standard items listed above will greatly facilitate the processing of student authorizations. However, there may be instances where letters of acceptance will be incomplete, or where some institutions may be unable to provide the requested information.

In such instances, officers may need to seek additional information from their geographic desk at NHQ who will contact the educational institution directly, in order to satisfy themselves that all criteria are met before an authorization is issued. NHQ will then advise the visa office accordingly.

Letters of acceptance to the institutions listed in Schedule III R17(2) are not acceptable for student admission. For the list of prescribed institutions, refer to section 1.2.9. For an explanation of the rationale behind prescribing institutions, refer to section 2.4.

3.3 Financial sufficiency

3.3.1 Legislative requirement

For the exact legislative reference related to financial sufficiency, officers should refer to section 1.2 of this chapter, or to R15(1)(b).

In general, officers need to satisfy themselves that applicants have sufficient financial resources to pay their tuition fees, transportation costs to and from Canada as well as living expenses for themselves and any dependents who may be accompanying them, without the need to engage in employment.

3.3.2 Exemptions

Refugee claimants and their dependants applying for a student authorization in Canada are exempted from these financial requirements. [R15(1.1).]

Because of special sponsorship and funding arrangements, it can be assumed that students sponsored by CIDA and DFAIT meet the financial requirements relating to single students. Students with spouse and dependants must have additional funds in accordance with the formula outlined below.

3.3.3 Basis of formula for determining financial sufficiency

In order to facilitate the assessment of financial sufficiency, and ensure more consistency in the processing of applications, CIC has developed a special formula, in consultation with DFAIT, visa offices, and international student interest groups which have an interest in facilitating the recruitment of students from abroad.

The foundation of this formula is the use of a base amount for students which covers all costs except tuition, plus an additional base amount for spouses and another for dependants, as applicable. The base amount for students satisfies all requirements related to maintenance and transportation, including the cost of books, equipment and supplies. The economic framework or size of the community where the student is destined is not a consideration, and the amount will allow for a very basic lifestyle only. The base figure will be reviewed annually and adjusted as required.

3.3.4 Formula for all provinces except Québec

The following formula applies to all applications except those from students destined to Quebec. The different formula for Quebec students is outlined below.

STUDENT BASE	\$10,000 for twelve-month period, plus the cost of tuition, pro rated at \$833 per month.
SPOUSAL BASE	\$4,000 for twelve-month period for spouse or adult companion, pro-rated at \$333 per month.
DEPENDANT BASE	\$3,000 for twelve-month period per dependant child of any age, pro-rated at \$255 per month.

3.3.5 Formula for province of Québec

Students destined to the Province of Quebec will continue to be assessed according to criteria developed by MRCIQ.

If the application is being reviewed by an officer at a mission where there are no local Quebec representatives, officers will assess financial sufficiency according to the following criteria.

STUDENT BASE	\$9,600 for twelve-month period, plus the cost of tuition, pro-rated at \$800 per month.
FIRST DEPENDANT	60% of student base or \$5,740 for twelve-month period, pro-rated at \$478 per month.
SUBSEQUENT DEPENDANTS	40% of student base or \$3,840 for twelve-month period, pro-rated at \$320 per month.

3.3.6 Assessment for first year of studies only

Officers are reminded that students are required to demonstrate financial sufficiency for the first year of studies only, regardless of the duration of the course of studies in which the student is enrolled. In other words, a single student entering a four-year degree program with an annual tuition

3.3.7 Other sources of support

fee of \$5,000 must demonstrate funds of \$15,000 to satisfy financial sufficiency requirements, and not the full \$60,000 which would be required for four years.

In assessing the adequacy of a student's financial resources, officers may take into consideration such sources of funds derived through scholarships, fellowships, assistantships and the like, as well as financial support or support in kind which may be available from relatives in Canada. Funding from other sources, either in Canada or abroad, may also be considered; however, these must be examined closely for reliability. Officers will not consider as reliable source the student's possible earnings from part-time or summer employment. Foreign students in Canada, as visitors, are ineligible for benefits under the Canada Student Loan Act.

3.3.8 Foreign exchange controls

Foreign exchange control measures are in effect in many countries. Where students are dependent on such controlled funds, they should be required to present one of the following:

- a) a letter from a Canadian financial institution stating that funds necessary for the entire upcoming academic year are on deposit in the applicant's name;
- b) a bank draft in convertible currency for an amount equal to the funds required for the upcoming academic year and made payable jointly to the educational institution and the applicant; or
- c) written assurance from the applicant's bank that sufficient funds are on deposit, and from the foreign exchange control authorities that the applicant will be permitted to export a sum adequate for maintenance costs in Canada.

3.3.9 Availability of Funds

Students can establish that they have adequate funds by providing documentary evidence such as:

- a) a letter from a Canadian financial institution stating that funds necessary for the first year of the course of study are on deposit with the institution in the applicant's name;
- b) a bank draft in convertible currency for an amount equal to the funds required for the upcoming academic year, and made payable jointly to the educational institution and the applicant;
- c) written assurance from a bank that applicants have sufficient funds, and, where applicable, from the foreign exchange control authorities that they will be permitted to export a sum adequate for their maintenance in Canada;
- d) written statements from support persons in Canada stating that they have the means and agree to support the student;
- e) evidence of acceptance in a Canadian government funded program such as CIDA or DFAIT.

3.3.10 Validity period, where no doubt exists on financial sufficiency beyond one year

Where no doubt exists on a student's financial sufficiency beyond the first year of study, and where the full duration of the course exceeds one year, officers will issue the student authorization for the full period of the

3.3.11 Validity period, where doubt exists on financial sufficiency beyond one year

course of study, provided all other requirements are met. If applicable, a multiple entry visitor visa should be issued for the same duration as the student authorization.

3.3.12 Counselling students on Canadian cost of living

While adequate funding for the full duration of the intended program need not be demonstrated at the time of application, officers should also have no reasonable basis to doubt that such funding will be available. Any such doubt would not be grounds for refusal, but rather for limiting the student authorization to a period of one year.

When counselling students on financial requirements, or when distributing counselling material to foreign students, officers should ensure that applicants have a clear understanding that the amount required by CIC for their maintenance and that of their dependants are minimum amounts and will provide for a very basic lifestyle only. This is especially true if the student must live in one of Canada's major cities. Students should give careful consideration to the advice provided by their educational institution on the cost of living in their area, and where possible, ensure that additional funds will be available to meet the level of financial resources suggested by the institution.

3.4 Medical requirements and health insurance

3.4.1 Expediting medicals

Medical requirements for students are the subject of much discussion and the source of some discontent among international student interest groups, as they are seen by CIC stakeholders as the main impediment to speedy processing of student authorizations.

Removal of medical requirements is not an option. However, CIC is reviewing certain aspects, such as those elements which the medical exam should encompass, and whether local doctors should be allowed to perform medicals. Discussions are ongoing with the Advisory Committee on International Students and Immigration on this issue and officers will be kept informed of any streamlining or operational modifications.

On an operational basis, as a way of expediting applications, students should be encouraged to have medicals completed in concert with their application to Canadian educational institutions. For its part, the CIC is encouraging educational institutions to inform students of immigration requirements and the need to do medicals early in the process. Canadian Education Centres abroad should also be encouraged to counsel students accordingly.

3.4.2 Medical requirements

Foreign students must meet the same medical requirements as those which apply to all visitors to Canada.

a) Six-month rule

Generally speaking, students who intend to be in Canada for more than 6 months, and have resided in a designated country for more than 6 months within the year preceding their arrival in Canada are required to undergo a medical examination. The determining factor is

not citizenship, but whether the person resided in a designated country in the preceding 6 months. APPENDIX E lists countries where medicals are **not** required. For the complete list of Medical Requirements and Details by Country, consult IR 3.

b) Designated occupation

Students from non-designated countries must undergo a medical examination if they are to be employed in

- child care,
- primary or secondary teaching, and
- health services field occupations.

Students from designated countries must undergo a medical examination if they are to be employed in

- agricultural,
- child care,
- primary or secondary teaching, and
- health services fields.

3.4.3 Provincial Health insurance

Applicants should be strongly counselled that health insurance is a critical necessity, and that they should arrange for health insurance coverage in advance of arrival in Canada.

The Province of Québec will not issue a CAQ to students unless they show acceptable coverage. To be eligible for health insurance coverage under any of the other provincial or territorial health insurance plans, one must establish residence in a province and register to ensure coverage.

Where applicants are not eligible for provincial health insurance, or where they are eligible after fulfilling certain residency requirements, they should be counselled to register for private plans during their stay in Canada, or until such time as they can qualify for provincial coverage.

Proof of coverage for a period of one year should be sufficient, but applicants should be counselled that they will need to extend their coverage for the duration of their stay in Canada.

Information can be obtained directly through most Universities and schools, or directly from private insurance companies.

Eligibility of provincial health insurance coverage for students and their dependants varies. Consult the chart in APPENDIX F for details.

3.5 Student bona fides

3.5.1 Factors underlying assessment of bona fides

There are two major factors underlying the assessment of student bona fides.

First, foreign students have not represented a control or enforcement problem for Canada. Second, there is a new and growing realization in Canada that foreign students yield significant benefits for our economy.

In administering its foreign student program, CIC must support the policies of other federal government departments, provinces and educational institutions who are anxious to capitalize on the potential which foreign academic talent represents.

3.5.2 Assessment criteria

In establishing whether a foreign student is a bona fide visitor, officers should be guided by the knowledge that foreign students educated in Canada provide needed links for trade and investment, and that they are an excellent source of future skilled immigrants. It is not uncommon for highly qualified students, particularly those at the graduate level, to work for a year after completing their course of studies and apply for permanent residence status through visa offices in the USA. CIC views this development as a positive outcome.

Foreign students have the burden of proving to the satisfaction of officers that they are bona fide visitors. However, in these cases, the general question of bona fides is not so much whether the applicant is a prospective immigrant, but whether the applicant is a prospective illegal immigrant.

3.6 Terms and conditions

3.6.1 Legislative reference

Visa officers may recommend the imposition of terms and conditions, and immigration officers may impose terms and conditions when issuing student authorizations, in accordance with R23. This regulation lists the terms and conditions which may be imposed on all visitors.

3.6.2 Exemption

Terms and conditions cannot be imposed on a student authorization issued to a person who is on a Minister's Permit, or to a refugee claimant who does not have valid visitor status.

3.6.3 Terms and Conditions

A. Required of all foreign students**1. Must be in attendance at an approved type of institution.**

This conditions applies to all students other than those attending primary or secondary schools.

All documents should specify the type of educational institution which the student will be attending, such as university or community college, without specifying the specific institution or the program in which the student is enrolled.

For instance, if students wish to change from an engineering course at one university to a medical course at another university, they can do so without the need to obtain a new authorization since they are attending the same type of institution. However, students are required to obtain a new authorization if they wish to change from one type of educational institution to another, for example, from a university to a community college.

B. To be imposed at the discretion of officers**2. Prohibited from engaging in employment in Canada.**

This condition prohibiting students from engaging in employment in Canada cannot be applied if officers are issuing an employment authorization along with the student authorization or if the student is eligible to work on the campus of the institution at which s/he is registered on a full-time basis pursuant to R19(1)(x).

3. Attendance only at a university, college or other institution which officers specify by name.

This condition should be reserved for those few cases where officers believe that this type of control is required. No terms and condition referring to attendance at a specific, named educational institution should appear on student authorizations issued to primary or secondary school students.

4. Prohibited from working in certain occupations unless medical requirements have been met.

The following term and condition should be imposed on students who have not undergone a medical examination:

- Students from a non-designated country, not authorized to work in
 - child care,
 - primary or secondary teaching, and
 - health services field occupations.
- Students from a designated country, not authorized to work in
 - agricultural,
 - child care,
 - primary or secondary teaching, and
 - health services fields.

5. Must report for medical examination, surveillance or treatment

If warranted by the student's medical condition, terms and conditions must be imposed as follows:

- the time and place where the student must report for medical examination, surveillance or treatment or for any other purpose;
- the times and places at which the student must furnish evidence of compliance with the terms and conditions thus imposed.

6. Must leave Canada by a specific date.

7. Travel in Canada is restricted.

3.7 Validity periods

3.7.1 Policy intent

CIC is committed to facilitating the recruitment of bona fide students, and to rationalizing the process for them to enter and remain in Canada. Once officers have determined that a student is bona fide and meets the requirements, the operational goal is to eliminate or at least minimize further transactions with the student. This objective remains paramount in the processing of cases, and can be accomplished through several procedures outlined in this chapter, including the issuance of long-term authorizations as specified in this chapter.

3.7.2 Post secondary

In general, the period of validity of student authorizations for students post-secondary students should correspond to the duration of their proposed course of studies in Canada, plus an additional three months. As outlined in sections 2.5.5 d) and 2.5.7 d), this policy does not apply to students sponsored by CIDA or DFAIT.

The determinant factor must be that the student is a bona fide visitor. This policy is meant to assist foreign students who will be studying in Canada at the post secondary level for several years.

The duration of the authorization can be the entire course of post secondary studies, for example, 2 or 3 years for a master's degree, even though the official acceptance letter from the university is only for one year at a time. An additional 3 months should be added to the student authorization to allow the student to prepare for his or her return home, or to arrange for post graduate employment under E08.

Visitor visa

If a visitor visa is issued in conjunction with the student authorization, the length of the visa should also correspond to the length of the student authorization.

Exceptions

Exceptions to this policy which warrant validity periods limited to one year would include:

- a) where concerns exist about the student's financial means which are not strong enough to result in a refusal;
- b) where concerns exist about the institution with regard to the school's academic or administrative practices;
- c) where the length of a program of non academic studies is not clearly identified or appears exaggerated;
- d) situations where there are concerns that the person may pose a threat to the well-being of the democracy of Canada. See IC 2, APPENDIX C for a list of statesman/special category countries where this applies, and IC 2, section 44. for the processing procedures applicable for these countries.

Officers may limit the student authorization if they have concerns about a student's financial means which are not sufficient to refuse the application. Limiting the duration of a student authorization should be the exception and should not be used as an excuse for not refusing an application. Officers should remember that it is more often more difficult to refuse an extension of a student authorization in Canada when students have begun their course of studies than to refuse the initial authorization overseas.

3.7.3 Primary and secondary students

Students at the primary and secondary levels should be issued authorizations on a year-by-year basis, except for dependants of persons who have been issued long-term authorizations, provided the period requested does not exceed that which has been given to the head of the family.

3.7.4 Students destined to Québec

In general, the Québec Government issues long-term CAQs to post secondary foreign students destined to Québec. For Québec students, the duration of the student authorization should coincide with the duration of the CAQ.

3.7.5 CIDA students

Students entering Canada under programs sponsored by CIDA should be issued student authorizations on a year to year basis.

3.7.6 DFAIT students

At visa offices, students sponsored under the Commonwealth Scholarship and Fellowship Plan will initially be issued student authorizations valid for one year. On renewal in Canada, the student authorization may be made valid for the tenure of the award.

Students under the Government of Canada Awards program are usually sponsored for one year. Their authorization should correspond to the duration of the award.

3.7.7 Statesman and special category country

Students from a statesman or special category country should have their authorization issued for one year, to be extended on a year-by-year basis once in Canada. See IC 2, APPENDIX C for a list of statesman/special category countries where this applies, and IC 2, section 44. for the processing procedures applicable for these countries.

3.7.8 Rotary Exchange Students

The Rotary International Youth Exchange Program enables students to attend high school for one year and sponsored events over the summer months after completion of academic year. See section 2.5.9.

Consequently, all student authorizations issued to Rotary International Youth Exchange Program participants must be valid until August 31 of the following year.

4. PROCESSING AN APPLICATION ABROAD

4.1 Requirement to apply abroad

A10 requires that all visitors intending to study in Canada apply for and obtain a student authorization prior to arrival at a port of entry.

Refer to section 3.1.1 for details.

4.2 Persons exempt from applying abroad

Exemptions fall into four categories

- 15(2) persons not required to obtain an authorization before arriving at a Port of Entry;
- 15(3) persons whose application can be processed at a Port of Entry;
- 16 persons who may apply from within Canada; and
- 14.2 persons exempt from the need for a student authorization.
- 14.3

Refer to APPENDIX D for details.

4.3 Documents required with application

The following documents must be provided with application:

- Application Form IMM 1294
- Cost-Recovery Fee
- Letter of Acceptance
- Proof of identity
- Proof of financial support
- CAQ for students destined to Québec

4.4 Reviewing the documentation

Officers should check to ensure that all documents are enclosed with the application and that these have been properly completed.

Québec bound students

Officers are not required to conduct a full assessment for students destined to Québec who are in possession of a valid CAQ. A visa officer may issue the student authorization after having ensured that the student meets the usual statutory requirements, and that financial resources meet Québec's standards outlined at section 3.3.5.

CIDA and DFAIT

Special processing arrangements for students sponsored by CIDA and DFAIT are outlined throughout these procedures. Officers should ensure that all applicable instructions at section 2.5 are followed carefully.

Refer to section 2.5 for details.

4.4.1 Form IMM 1294

Check to ensure that Application form IMM 1294 has been properly completed and signed by the applicant.

4.4.2 Cost Recovery Fee

Determine whether a cost—recovery fee is payable and that payment has been included with the application.

Refer to section 2.3.4 for details on exemptions.

The fee is \$125 for a student authorization. Depending on local operating conditions, fees may be payable by cash, Canadian, American or local currency at the rate of exchange set by the Mission; Visa or MasterCard; certified cheque or money order in Canadian funds payable to the Receiver General for Canada.

Refer to section 2.3 for details.

4.4.3 Letter of Acceptance

Each application must be accompanied by a Letter of Acceptance from the educational institution which the student will be attending.

Exemption

Dependents of holders of student and employment authorizations are exempt from this requirement.

CIDA and DFAIT

Because of special sponsorship arrangements, it can be assumed that students sponsored by CIDA or DFAIT meet requirements related to acceptance, institution, course of study and language.

Conditional

Conditional letters of acceptance are acceptable, and students should benefit from long—term authorizations.

Refer to section 3.2.3 for details.

Using the following guidelines, check to ensure that the Letter of Acceptance is complete, and that the course of study meets legislative requirements.

STANDARD INFORMATION

The Letter of Acceptance should include the following basic information:

- The name, date of birth, mailing address of student;
- The course for which the student has been accepted;
- The estimated duration or date of completion of course;
- The date on which course begins;
- The last date on which student must register for course;
- The academic year which student will be entering;
- Whether course is full—time or part—time;
- The tuition fee;
- Any condition related to the acceptance;
- Clear identification of the educational institution;
- Licensing information for private institutions.

Refer to section 3.2 for details.

COURSE OF STUDY**Exemption:**

The following criteria do not apply to privately–funded institutions administered by the Post–Private Secondary Education Commission in British Columbia, which are deemed by provincial statute to meet these requirements.

Requirements:

The Letter of Acceptance must show that the applicant will be pursuing a course of studies which meets at least one of the following regulatory requirements:

- is at least 6 months in duration and involves at least 24 hours of instruction per week; [17(1)(a)]
- is given by a chartered college or university, or by any other publicly funded institution; [17(1)(b)]
- is recommended by any department or agency of the Canadian or a provincial government; [17(1)(c)]
- is incidental and secondary to the applicant's main purpose for being in Canada; [17(1)(d)]
- involves upgrading of skills or language training and is given at a provincially or federally licensed institution [17(1)(e)].

Refer to section 3.2.6 and 3.2.7 for details.

4.4.4 Proof of funds

The applicant must present a financial document which officers must review to determine that adequate financial resources are available to support the applicant and any accompanying dependants for the first year of the course of study.

CIDA and DFAIT

Single students sponsored by CIDA or DFAIT are deemed to have sufficient funds by virtue of their sponsorship, but must demonstrate that they have sufficient additional funds to support any accompanying dependants.

Refer to sections 3.3.4 and 3.3.5 for assessment formula.

Refer to section 3.3 for details of financial requirements.

Applicants can establish that they have adequate funds by providing documentation such as:

- Letters or statements from the student's bank;
- Evidence of scholarships, fellowships, research assistantships;
- Written statements from supporting persons stating that they have the means and agree to support the student in Canada;
- Evidence of sponsorship in CIDA or DFAIT Programs.

4.4.5 Proof of identity

Applicants should provide proof of identity such as a passport, a travel document or official identity document, or photocopies of the following pages: identity pages, date and place of issue and validity date.

Officers must be satisfied that applicants have a valid passport upon presentation of their application – they are not required to have a passport valid for the entire duration of their course of studies.

4.4.6 Certificat d'acceptation du Québec

Persons exempt from a passport requirement [R14(4)] should provide an acceptable personal identification such as citizenship document, national identification document birth certificate, etc.

Students destined to an educational institution in Québec require a CAQ, unless they are

- chosen under a government funded program for developing countries as sponsored by CIDA;
- dependants of diplomats accredited to Canada;
- enrolled in a part-time course of less than 20 hours per week;
- enrolled in intensive French or English courses of at least 20 hours per week, for a maximum period of 12 weeks;
- in possession of a Certificat de sélection du Québec (CSQ) when a decision has been made by Canada Immigration to accept to process the application for permanent residence in Canada.

Students who have not finished their course at CAQ expiry

There may be cases where a CAQ has expired but students have not completed their course of study within the initially planned timeframe. In these cases, a new CAQ may not be required, provided studies are finished within twelve months of the CAQ's expiry date. During this period, a new student authorization may be issued without a CAQ, providing the student's program remains unchanged and time required for completion is less than one year. Otherwise, a new CAQ will be required.

Countries served by MRCIQ

A student who resides in a country where there is a Service d'immigration du Québec (SIQ) must apply to that office. The SIQ will review the application and verify that the student's financial resources are adequate. Once the application is approved, the SIQ issues the CAQ and advises the student to contact the visa office.

A visa officer's role is to ensure that the student is a bona fide visitor and all other statutory requirements are met.

Refer to list at section 2.1.6.

Countries not served by MRCIQ

A student who resides in a country where there is no SIQ must send the application to the appropriate MRCIQ regional office in Canada. Educational institutions usually provide the applicant with instructions on how to apply for a CAQ.

An MRCIQ regional office may send by fax or telex to the visa office responsible for processing the student authorization, details of a particular CAQ and an estimate of funds required by an applicant. Upon receipt, the visa office opens a miscellaneous file and awaits contact from the applicant.

A visa officer may issue the student authorization after having ensured that the student meets the usual statutory requirements, and that financial resources meet Québec's standards.

Refer to section 2.1 for details.

4.5 What to do if documents incomplete

If the documents are incomplete, and/or the processing fee is incorrect, processing of the application cannot be initiated until the deficiencies have been corrected.

Officers are to use their judgment in determining the most efficient method of addressing the difficulties. In some cases, a telephone call may best serve the purpose, in others, it may be necessary to return the application and documents to the client with a written request for the missing information.

In some circumstances, depending on the processing office, it may be necessary to have the client come to the office for an interview or to complete the documentation.

4.6 Assessing the application

Once the documentation has been reviewed, officers will need to determine the following elements:

- Is the applicant a bona fide visitor?
- Is the applicant a member of the inadmissible classes?
- Is the applicant from a special category country?
- Does the applicant require a medical examination?
- Does the applicant need a visitor visa?
- Does the applicant need an employment authorization?
- Does the officer have any doubt on the applicant's language ability?
- Does the applicant have health coverage?

4.6.1 Bona fide visitor

Applicants have the burden of proving to your satisfaction that they are bona fide visitors. However, in the case of foreign students, the general question of bona fides is not so much whether the applicant is a prospective immigrant, but whether the applicant is a prospective illegal immigrant.

Refer to section 3.5 for guidance.

4.6.2 Inadmissible class

Review the application form IMM 1294 to determine whether the applicant is described in any section of A19 referring to inadmissible classes.

4.6.3 Special category country

Review IC 2 to determine if the student is from a special category country.

4.6.4 Medicals

Determine whether the applicant must undergo a medical examination, as required by R21(4).

Six-month rule

Students who intend to be in Canada for more than 6 months, and have resided in a designated country for more than 6 months within the year preceding their arrival in Canada are required to undergo a medical examination.

Refer to APPENDIX E for non-designated countries.

4.6.5 Visitor visa

4.6.6 Employment authorization

4.6.7 Applicant's knowledge of English or French

Designated occupations

Students from non-designated countries must undergo a medical examination if they are to be employed in

- child care,
- primary or secondary teaching, and
- health services field occupations.

Students from designated countries must undergo a medical examination if they are to be employed in

- agricultural,
- child care,
- primary or secondary teaching, and
- health services fields.

Refer to section 3.4 for details.

Review Schedule II of Immigration Regulations to determine whether the student requires a visitor visa.

Refer to APPENDIX A for details.

On campus

Full-time students registered in a degree or diploma-granting course are allowed to work on the campus of the institution at which they are registered without the need for an employment authorization. Officers should include the following remark on the student authorization:

"May accept employment on the campus of the institution at which the holder is registered in full-time studies."

Validation exempt

The following students require an employment authorization, but are exempt from validation under the code indicated at right:

- Spouses of students EO7
- Post graduation employment E08
- CIDA students D30
- Co-op education and employment integral to studies D35
- Destitute students C05
- Students petitioned by a university E30
- International Student and Young Worker programs E35

Refer to section 2.5 for details on Student Employment.

Refer to APPENDIX B and APPENDIX C for E35 programs.

There may be cases where officers feel that a student's lack of English or French will make it extremely difficult for an applicant to follow the desired course of studies. This should generally not be a concern, as institutions require a pass mark on language tests before offering

	admission, or have facilities for upgrading language skills. Nonetheless, where officers have serious doubts, they should communicate with their geographic desk at NHQ. Refer to section 3.2.9 for guidance.
4.6.8 Health coverage	Applicants should be counselled on the necessity to obtain health insurance. Different provinces have different requirements with respect to eligibility for provincial coverage. Refer to section 3.4.3 and APPENDIX F for details.
4.7 Prescribed institutions	Officers must confirm that students are not destined to an institution prescribed in Schedule III of the <i>Immigration Regulations</i> . Refer to section 2.4.1 for details.
4.8 Where concerns exist about institutions	There may be cases when students present a Letter of Acceptance from an institution where concerns exist about its academic or administrative practices. If officers have information about such schools where there is evidence that students never attend, attend infrequently or work illegally, they should pass this information to the CIC Regional office where the institution is located, or to the CPC–Vegreville, or to NHQ/SSE.
4.9 Interviews	In certain circumstances, it may be necessary to interview the applicant. Applicants should not be scheduled for interviews for the sole purpose of obtaining straightforward information. Issues which may warrant the need for an interview would include: <ul style="list-style-type: none"> a) questions or doubts concerning applicants' reasons for wishing to come to Canada, the arrangements made for their care and support, and their ability or willingness to leave Canada; or b) circumstances when the officer needs more information before issuing a refusal. This is not an exhaustive list. Other exceptional circumstances may warrant an interview.
4.10 Negative decision	If the applicant is found ineligible, and the application is refused, the officer must advise the client of the decision and of the reasons for the refusal in writing. CIDA Student When a CIDA student is found inadmissible, the visa officer will report the case to the local CIDA representative or to the CIDA NHQ Canadian Partnership Branch representative listed at section 2.5.5 b). DFAIT Student When a DFAIT student is found inadmissible, the visa officer will report the case to the International Council for Canadian Studies, as listed at section 2.5.7 b).
4.11 Issuing the authorization	Once the applicant has been found to meet all eligibility criteria and requirements and a student authorization is to be issued, officers must: <ul style="list-style-type: none"> • decide on the validity period;

4.11.1 Validity periods

- decide whether to recommend terms and conditions;
- issue a student authorization or, if the student is processed at a CAIPS office, issue a letter of introduction;
- issue a visitor visa, if required;
- issue an employment authorization, if required.

The following are general guidelines which apply:

Post secondary

Issue long-term authorization based on the length of time the student will require to complete the current course of study, with an additional three months to allow the student to prepare to return home or to arrange for post-graduate employment under E-08. Long-term authorizations apply regardless of the fact that the official acceptance letter from the university may only be valid for one year at a time.

Exceptions to this policy which warrant one-year validity periods include situations where concerns exist about the student's financial means which are not strong enough to result in a refusal, or situations where concerns exist about the institution's academic or administrative practices.

Primary and Secondary

Issue authorizations on a year-to-year basis unless they are dependants of persons with long-term authorizations, provided the period requested does not exceed that which has been given to the head of the family.

Québec

Authorizations should correspond to the validity of the CAQ.

CIDA

Issue yearly authorizations.

DFAIT

Issue authorization for an initial one-year period, with renewal valid for the tenure of the award.

Statesman and special category country

Issue a one-year authorization with yearly extensions. List of countries included in IC 2, APPENDIX F, and processing procedures outlined in IC 2, section 44.

Refer to section 3.7 for details.

4.11.2 Terms and conditions

Terms and Conditions are contained in FOSS.

Required for all students attending educational institutions, other than primary and secondary schools:

attend an approved **type** of institution, without specifying which institution or program.

May be recommended at the discretion of the visa officer:

- prohibited against engaging in employment;
- attend a university, college or other institution that you specify by name; this does not apply to primary or secondary students;
- leave Canada by a specific date;

4.11.3 Issuing the student authorization

- d) prohibit from engaging in employment unless medical requirements have been met;
 - e) report for medical surveillance, examination or treatment.
- Refer to section 3.6 for details.

Where the visa office is supported by CAIPS, officers should enter into CAIPS the data required to enable Port of Entry officers to produce the student authorization, and issue the letter of introduction to the applicant, as outlined at section 4.11.

Post secondary

If visa officers restrict the validity period of the student authorization to less than the full course of studies for post secondary students, they should note the reason in the “Remarks” box. If this is not done, port of entry officers will amend the authorization to reflect the full period of the course of study.

Québec Student

In the case of students destined to Québec, visa officers are asked to inscribe the number and expiry date of the CAQ in CAIPS under the “Remarks” box on the student authorization in order for the information to be transmitted in FOSS.

CIDA Student

CIDA students will be identified with code 599 on the student authorization.

DFAIT Student

DFAIT students sponsored under the Commonwealth Scholarship and Fellowship Plan will be identified by Code 506 on the student authorization. No special notation is required for Government of Canada Award students.

Non – CAIPS office

If the visa office is not supported by CAIPS, officers will have to complete Student Authorization Form IMM 1208. Instructions are contained in the ID and IH Manuals.

4.11.4 Issuing a Visitor Visa

If the applicant is not from a country described in Schedule II of Immigration Regulations, the visa officer is required to issue a visitor visa. Visas should be issued for multiple entries valid for same period as student authorization. Instructions are contained in OP 9.

CIDA

Where a visitor visa is issued to a CIDA student, the notation “CIDA Student” must be written underneath the visa.

DFAIT

Where a visitor visa is issued to a student sponsored by the Commonwealth Scholarship and Fellowship Plan, the notation “CSFP Student” will be written underneath the visa.

4.11.5 Issuing an employment authorization

If after reviewing the requirements at section 4.6.6 officers determine that an employment authorization is required, they will need to issue the appropriate document to the applicant. Instructions on the issuance of Employment Authorizations are contained in IS 15.

4.12 Introduction letter provided by CAIPS offices

Where an applicant is processed at a CAIPS office, visa officers provide clients with a letter of introduction instead of issuing the student authorization. Students must present this letter at the Port of Entry where officials will issue the authorization. In these cases, the following specific information must be included in the Letter of Introduction issued to the client:

- *Your application to study in Canada has been approved. You may now travel to Canada. You must have a valid passport or travel document.*
- In some circumstances, it may be appropriate to provide the date by which the student must enter Canada. If so, officers should add:
You must enter Canada no later than.... Failure to do so will invalidate this approval.
- *Please show this letter to the Canada Customs officer upon arrival in Canada. She or he will direct you to a Canada Immigration officer. This second officer will ensure that you meet the requirements for admission to Canada and issue your student authorization.*
- The following disclaimer must be clearly indicated at the bottom of the letter:
This letter is not valid for travel and is not an authorization allowing you to remain in Canada.
- The document number generated by CAIPS – beginning with F – must be printed at the top right-hand corner of the letter.

5. PROCESSING AN APPLICATION AT A PORT OF ENTRY

5.1 Applicants eligible to apply at POE

Refer to APPENDIX D for detailed information on exemptions which apply to the general rule to apply abroad. In order to determine a person's eligibility to apply at a port of entry, officers will be particularly concerned with references to

- persons who are not required to have an authorization before arriving at a port of entry, [15(2)], and
- persons whose application may be processed at a port of entry [15(3)].

5.2 Persons exempt from Student authorizations

Special provisions apply to dependants of diplomats, visitors attending short-term language courses, and persons who intend to enrol in courses of studies that are not academic, professional or vocational in nature. Special provisions are outlined below.

Pre-schoolers

Pre-school children who attend day-care centres, nursery schools or kindergarten below the Grade 1 level do not fall within the provisions of A10(b) and do not, therefore, require student authorizations.

5.2.1 Dependants of diplomats

All persons (except persons holding diplomatic, official, special or service passports from Turkey) coming to Canada on posting, including their families, will be in possession of diplomatic or official visas.

Examining officers should simply stamp their passports, thereby authorizing entry for a period of six months. During this period, the passport will be forwarded by the person's embassy or consulate to the Office of Protocol of the Department of Foreign Affairs and International Trade (DFAIT). The Office of Protocol will issue a diplomatic (D), consular (C), official (J) or international (I) acceptance counterfoil to the person's passport indicating that the person is accredited to Canada and entitled to remain in Canada for the duration of status.

Dependants of diplomatic personnel or members of their staff who wish to attend courses and who possess the acceptance counterfoil obtained from the Office of Protocol do not require a student authorization.

Child under 19

Dependent children of diplomats, consular officers, representatives or officials who are under 19 years of age who are considered to be members of the family forming part of the household will be issued acceptances. They do not require a student authorization.

Child over 19

Children over the age of 19 are only issued acceptances if they are registered as full-time students. After 25 years of age, dependants are no longer eligible to receive official acceptances, and must change their official status to regular immigration status. Children over 25 years of age

	<p>who are full-time students may obtain visitor status with permission to study, if they qualify as dependent children under Immigration Regulations. They are exempt from having to obtain a student authorization.</p> <p>On the first return to Canada of a representative or dependant whose passport bears a foreign representative acceptance counterfoil, the examining officers should stamp the passport and annotate it "for duration of status."</p> <p>For information</p> <p>Questions related to diplomats, consular officers, representatives and officials of foreign missions in Canada should be addressed through National Headquarters to the Office of Protocol, Foreign Affairs, Ottawa, Ontario K1A 0G2. In cases of urgency, contact the Immigration Advisor at the Office of Protocol at (613) 995-5957.</p>
5.2.2 Visitors attending short-term language courses	<p>Visitors may enter Canada or remain in Canada without a student authorization to attend a French or English language training course of three months' duration or less. The course duration does not have to be consecutive, but can be an accumulation of time adding up to three months.</p> <p>This three-month period must be strictly enforced. Visitors wishing to continue language training beyond the three-month period or those wishing to enrol in other educational programs must leave Canada and obtain student authorizations in the normal manner.</p> <p>Refer to section 3.1.3 b) for details.</p>
5.2.3 Persons who intend to enrol in courses not academic, professional or vocational in nature	<p>The Act does not require student authorizations for persons who intend to enrol in courses of studies that are not academic, professional or vocational in nature.</p> <p>Refer to section 3.1.3 c) for definition.</p>
5.3 Reviewing the documentation	<p>Once you have ascertained that the person is eligible to apply at a Port of Entry, and requires a student authorization to study in Canada, you must review the documents to ensure that they are valid and properly completed.</p> <p>Québec bound students</p> <p>For students destined to Québec who are in possession of a valid CAQ, officers are not required to conduct a full assessment. A student authorization may be issued after having ensured that the student meets the usual statutory requirements, and that financial resources meet Québec's standards as outlined at section 3.3.5.</p> <p>Students who are not in possession of a valid CAQ should be issued a three-month permit during which time they must obtain their CAQ from the Regional office of the Ministère des Relations avec Citoyens et de</p>

l'Immigration du Québec (MRCIQ) that serves the educational institution which the students will be attending. Once a CAQ is issued, these students must convert their status accordingly.

CIDA and DFAIT

Special processing arrangements are in place for students sponsored by CIDA and DFAIT. Officers should ensure that all applicable instructions outlined at section 2.5 are followed carefully.

Refer to section 2.5 for details.

Documents required

Each application for a student authorization must be accompanied by the following documentation:

- A Letter of acceptance from the educational institution
- Proof of funds
- Proof of identity
- A CAQ for students destined to Québec

Officers should review this documentation according to the following general guidelines:

5.3.1 Letter of Acceptance

Each application must be accompanied by a Letter of Acceptance from the educational institution which the student will be attending.

Exemption

Dependents of holders of student and employment authorizations are exempt from this requirement.

CIDA and DFAIT

Because of special sponsorship arrangements, it can be assumed that students sponsored by CIDA or DFAIT meet requirements related to acceptance, institution, course of study and language.

Conditional

Conditional Letters of Acceptance are admissible and students should benefit from long-term authorizations.

Refer to section 3.2.3 for details.

Using the following guidelines, you should check to ensure that the Letter of Acceptance is complete, and that the course of study meets legislative requirements.

Refer to section 3.2.3 for details

Standard information

The Letter of Acceptance should include the following basic information:

- The name, date of birth, mailing address of student;
- The course for which the student has been accepted;
- The estimated duration or date of completion of course;
- The date on which course begins;
- The last date on which student must register for course;
- The academic year which student will be entering;
- Whether course is full-time or part-time;

- The tuition fee;
- Any condition related to the acceptance;
- Clear identification of the educational institution;
- Licensing information for private institutions.

Refer to section 3.2 for details.

Course of study

Exemption:

The following criteria do not apply to privately-funded institutions administered by the Post-Private Secondary Education Commission in British Columbia, which are deemed by provincial statute to meet these requirements.

Requirements:

The Letter of Acceptance must show that the applicant will be pursuing a course of studies which meets at least one of the following regulatory requirements:

- Is at least 6 months in duration and involves at least 24 hours of instruction per week; [17(1)(a)]
- is given by a chartered college or university, or by any other publicly funded institution; [17(1)(b)]
- is recommended by any department or agency of the Canadian or a provincial government; [17(1)(c)]
- is incidental and secondary to the applicant's main purpose for being in Canada; [17(1)(d)]
- involves upgrading of skills or language training and is given at a provincially or federally licensed institution [17(1)(e)].

Refer to sections 3.2.6 and 3.2.7 for details.

5.3.2 Proof of funds

The applicant must present a financial document which officers must review to determine that adequate financial resources are available to support the applicant and any accompanying dependants for the first year of the course of study.

CIDA and DFAIT

Single students sponsored by CIDA or DFAIT are deemed to have sufficient funds by virtue of their sponsorship, but must demonstrate that they have sufficient additional funds to support any accompanying dependants.

Refer to sections 3.3.4 and 3.3.5 for assessment formula

Applicants can establish that they have adequate funds by providing documentation such as:

- Letters or statements from the student's bank;
- Evidence of scholarships, fellowships, research assistantships;
- Written statements from support persons stating that they have the means and agree to support the student;
- Acceptance in CIDA or DFAIT sponsored programs.

Refer to section 3.3 for details of financial requirements.

5.3.3 Proof of identity

The client should provide proof of identity by showing officers a passport, a travel document or official identity document, or photocopies of the following pages: identity pages, date and place of issue and validity date.

Persons exempt from a passport requirement [R14(4)] should provide an acceptable personal identification such as citizenship document, national identity document, birth certificate, etc.

5.3.4 Certificat d'acceptation

Students destined to an educational institution in Québec du Québec require a CAQ, unless they are

- chosen under a government funded program for developing countries as sponsored by CIDA;
- dependants of diplomats accredited to Canada;
- enrolled in a part-time course of less than 20 hours per week; or
- enrolled in intensive French or English courses of at least 20 hours per week, for a maximum period of 12 weeks;
- in possession of a Certificat de sélection du Québec (CSQ) when a decision has been made by Canada Immigration to accept to process the application for permanent residence in Canada.

Students who have not finished their course at CAQ expiry

There may be cases where students have not completed their course of study within the initially planned timeframe. In these cases, a new CAQ may not be required, provided studies are finished within twelve months of the CAQ's expiry date. During this period, a new student authorization may be issued without a CAQ, providing the student's program remains unchanged and time required for completion is less than one year. Otherwise, a new CAQ will be required.

Where to obtain a CAQ

A student who resides in a country where there is no Service d'immigration du Québec must send the application to the appropriate MRCIQ regional office in Canada. Educational institutions usually provide the applicant with instructions on how to apply for a CAQ.

Refer to list at section 2.1.6.

A student who resides in a country where there is a Service d'immigration du Québec (SIQ) must apply to that office. The SIQ will review the application and verify that the student's financial resources are adequate. Once the application is approved, the SIQ issues the CAQ and advises the student to contact the visa office.

Refer to section 2.1 for details.

5.4 Prescribed institutions

Officers must confirm that students are not destined to an institution prescribed in Schedule III of the Immigration Regulations.

Refer to section 2.4.1 for details.

5.5 Where concerns exist about institutions

There may be cases when students present a Letter of Acceptance from an institution where concerns exist about its academic or administrative practices. If officers have information about such schools where there is

5.6 When the applicant is not eligible

evidence that students never attend, attend infrequently or work illegally, they should pass this information to the CIC Regional office where the institution is located, or to the CPC–Vegreville, or to NHQ/SSE.

If you determine that an applicant is not eligible for a student authorization, you should advise the person:

- a) that you cannot issue a student authorization;
- b) that the person may apply for a student authorization at a visa office, counselling the person on how to apply; and
- c) that the person will be in contravention of the Act if he or she studies in Canada without an authorization.

If the applicant wishes to continue an application for admission, you may examine him or her for entry as an ordinary visitor (see PE 6, Examining Visitors) or initiate enforcement action (see Chapter PE 9, A20 Reports and Voluntary Withdrawal).

CIDA Student

If a CIDA student is found inadmissible, report the case to the CIDA NHQ Canadian Partnership Branch representative listed at section 2.5.5 b).

DFAIT Student

If a DFAIT student is found inadmissible, report the case to the International Council for Canadian Studies, as listed at section 2.5.7 b).

5.7 Assessing the application

Once you have determined that the person you are examining is eligible to obtain a student authorization, you must determine the following:

- Is the applicant a member of the inadmissible classes?
- Are the identity papers valid?
- Is the applicant from a special category country?
- Does the applicant require a medical examination?
- Does the applicant have to pay a cost—recovery fee?
- Do you have any doubt on the applicant's knowledge of English or French?
- Does the applicant have health insurance?

5.7.1 Inadmissible persons

Determine whether the applicant is described in any Section of A19 applying to inadmissible persons.

5.7.2 Identity papers

Review the relevant pages of the passport or identity document to determine its validity. Visitors are not required to have a passport valid for the entire period of the time being requested. Officers could, for example, give applicants entry for three years even though their passport expires in one year. Counsel applicants about the importance of renewing their passport, and advise them that they may be denied entry if they seek to enter Canada with an expired passport.

5.7.3 Special category country

Review IC 2, section 20. to determine if the student is from a special category country.

5.7.4 Medical examination

Determine whether the applicant must undergo a medical examination, as required by R21(4).

Six-month rule

Students who intend to be in Canada for more than 6 months, and have resided in a designated country for more than 6 months within the year preceding their arrival in Canada are required to undergo a medical examination.

Refer to APPENDIX E for non-designated countries.

Designated occupations

Students from non-designated countries must undergo a medical examination if they are to be employed in

- child care,
- primary or secondary teaching, and
- health services field occupations.

Students from designated countries must undergo a medical examination if they are to be employed in

- agricultural,
- child care,
- primary or secondary teaching, and
- health services fields.

Refer to section 3.4 for details.

5.7.5 Cost recovery fee

Determine whether you should assess a cost-recovery fee.

Refer to section 2.3.4 for exemptions.

The fee is \$125 for a student authorization. Fees are payable by cash in Canadian funds, Visa or MasterCard; certified cheque or money order in Canadian funds payable to the Receiver General for Canada.

The fee is payable at the time the request is made. Officers will collect the cost-recovery fee only after they decide to issue a student authorization.

Refer to section 2.3 for details.

5.7.6 Applicant's knowledge of English or French

There may be cases where the officers feel that a student's lack of English or French will make it extremely difficult for an applicant to follow the desired course of studies. This should generally not be a concern, as institutions require a pass mark on language tests before offering admission, or have facilities for upgrading language skills. Nonetheless, where officers have serious doubts, they should advise NHQ/SSE.

Refer to section 3.2.9 for guidance.

5.7.7 Health insurance

Applicants should be counselled on the necessity to obtain health insurance. Different provinces have different requirements with respect to eligibility for provincial coverage. If provincial coverage is not an option, applicants should register for a private plan to cover the duration of their stay in Canada.

5.8 Issuing the authorization

Refer to section 3.4.3 for details and APPENDIX F for list of provincial coverage

If you decide to grant entry to a person as a student, you must:

- decide on the validity period of the student authorization;
- decide whether to impose terms and conditions;
- issue a student authorization, and
- counsel the student.

5.8.1 Validity period

The following are general guidelines which apply:

Post secondary

Issue long-term authorizations based on the length of time the student will require to complete the current course of study, with an additional three months to allow the student to prepare to return home or to arrange for post-graduate employment under E-08. Long-term authorizations apply regardless of the fact that the official acceptance letter from the university may only be valid for one year at a time.

Exceptions to this policy include situations where concerns exist about the student's financial means which are not strong enough to result in a refusal, or situations where concerns exist about the institution's academic or administrative practices.

Primary and secondary

Issue authorizations on a year-to-year basis unless students are dependants of persons with long-term authorizations, provided the period requested does not exceed that which has been given to the head of the family.

Québec

Authorizations should correspond to the validity of the CAQ.

CIDA

Issue yearly authorizations.

DFAIT

Issue an initial authorization for one-year with renewal valid for the tenure of the student's award.

Statesman and special category country

Issue a one-year authorization with yearly extensions. List of countries included in IC 2, APPENDIX C, and processing procedures outlined in IC 2, section 44.

Refer to section 3.7 for details.

5.8.2 Terms and Conditions

Terms and Conditions are contained in FOSS.

Required for all students attending educational institutions, other than primary and secondary schools:

attend an approved type of institution, without specifying which institution or program.

May be imposed at the discretion of the officer:

- a) prohibited against engaging in employment;

- b) attend a university, college or other institution that you specify by name; this does not apply to primary or secondary students;
- c) leave Canada by a specific date;
- d) prohibit from engaging in employment unless medical requirements have been met;
- e) report for medical surveillance, examination or treatment.

Refer to 3.6 for details.

Medical instructions

If warranted by the applicant's medical condition, you must impose the terms and conditions as follows:

- the time and place the student must report for medical examination, surveillance or treatment or for any other purpose [R23(3)(k)];
- the times and places at which the student must furnish evidence of compliance with the terms and conditions. [R23(3)(l)].

Exemption

You cannot apply terms and conditions on a student authorization issued to a person who is on a Minister's Permit or to a refugee claimant who does not have valid visitor status.

Refer to section 3.6 for details.

5.8.3 Completing IMM 1442

Officers should prepare the student authorization form IMM 1442 by entering the data into FOSS, using the Full Document Entry screen. Generate the document on the full-document entry printer. If you need help with coding, use the FOSS help screens.

If the FOSS system is not operational, complete the IMM 1208 manually and enter the information in FOSS as soon as it is available.

Québec Student

Inscribe the number and expiry date of the CAQ in FOSS.

CIDA Student

CIDA students will be identified with code 599 on the student authorization.

DFAIT Student

DFAIT students sponsored under the Commonwealth Scholarship and Fellowship Plan will be identified by Code 506 on the student authorization. No special notation is required for Government of Canada Award students.

5.8.4 Counselling

When you are counselling a student, you should cover the following points:

- a) the expiry date of the student authorization;
- b) the terms and conditions that you have imposed;
- c) the procedures for applying for an extension;
- d) cost-recovery requirements, should the student need to change his or her student authorization or apply for an employment authorization;
- e) procedures for applying for an employment authorization;
- f) procedures for changing terms and conditions, such as how to apply for an extension or to request a change of educational institutions;

5.9 Student employment

- g) the importance of ensuring appropriate health insurance coverage.

Refer to section 2.6 or APPENDIX A for details.

On campus

Full-time students registered in a degree or diploma-granting course are allowed to work on the campus of the institution at which they are registered without the need for an employment authorization. Officers should include the following notation on the student authorization:

“May accept employment on the campus of the institution at which the holder is registered in full-time studies”.

Validation exempt

The following students require an employment authorization, but are exempt from validation under the code indicated at right:

- Spouses of students EO7
- Post graduation employment E08
- CIDA students D30
- Coop education and employment integral to studies D35
- Destitute students C05
- Students petitioned by a university E30
- International Student and Young Worker programs E35

Refer to Table at APPENDIX B or APPENDIX C for E35 Programs

5.10 Students examined by visa offices

Non-CAIPS Visa Offices

Applicants processed by a non-CAIPS visa office will present a partially completed Form IMM 1208.

CAIPS Visa Offices

Applicants processed by a CAIPS visa office will present a Letter of Introduction. The document number generated by CAIPS which provides access to the appropriate document in FOSS, is printed at the top right-hand corner of the letter and begins with the letter F.

Process at POE

When a student arrives for examination at your POE with the required documentation issued by the mission overseas, you should determine:

Assessment

- a) whether the student is still eligible to obtain a student authorization;
 - has there been any change in circumstances?
 - are the medical results still valid?
- b) whether the student has paid the cost-recovery fee;
- c) whether the student has become inadmissible since being issued the documentation by the visa office;
- d) whether the student has funds available, taking into account that the visa office must have been satisfied that there were adequate funds available before issuing the visa; and

- e) whether **post secondary students** are entering Canada with a student authorization with a period of validity for the full course of studies; if this is not the case, and if reasons have not been noted in the "Remarks" box, you should amend the authorization to reflect the full period of the course of study.

Issuing an authorization

Impose terms and conditions as appropriate and:

Students processed by a CAIPS visa office:

retrieve the information from FOSS utilizing the entry number indicated on the Letter of Introduction and generate a completed Form IMM 1442.

Students processed by non – CAIPS visa office:

- a) complete the IMM 1208 and stamp the student's passport; and
- b) enter the information from the IMM 1208 into FOSS.

6. PROCESSING AN APPLICATION IN CANADA

6.1 Persons Eligible To Apply In Canada

Visitors in Canada eligible to apply for a Student Authorization from within Canada, and persons who are exempt from the need for a Student Authorization, are listed in APPENDIX D. Officers should check this list to determine an applicant's eligibility.

Essentially, immigration legislation requires visitors – students who apply to vary or cancel the terms and conditions of their admission, or to extend their stay in Canada, to submit an application in writing. Clients must provide enough information to enable the officer:

- a) to determine whether the client is eligible, and
- b) to make a decision.

6.2 Where clients apply

All visitors wishing to apply for a Student Authorization must do so in writing to the Case Processing Centre in Vegreville (CPCV). To apply, clients contact their local Canada Immigration Centre (CIC), TeleCentre or Canada Infocentre to obtain a visitor application kit. This kit contains the application forms, a guide book, a fee schedule and a pre-addressed envelope for the CPCV.

Applications are not dropped off at a CIC but rather mailed directly to the CPCV with the required documentation.

6.3 Role of CPCV and CIC

The CPCV is always the first point for persons wishing to apply for a student authorization in Canada. If certain difficulties develop where the CPCV cannot make a decision, officers will refer the case to the CIC in the client's region.

Negative decisions issued directly by the CPCV will be limited to cases which are incomplete and where attempts to contact the applicant have been unsuccessful, or cases where the client has failed to meet basic eligibility criteria.

Cases referred to the CIC for processing will be finalized there and will not be returned to the CPCV. However, this does not preclude the same client from submitting a new application at a future time to the CPCV.

Refer to section 6.12 for details of referral criteria.

6.4 Valid Visitor status

Persons cease to be visitors when they

- a) fail to comply with any term or condition under which they are authorized to remain in Canada;
- b) attend an educational institution or engage in employment in Canada without having been authorized to do so;
- c) remain in Canada for a period of time greater than that for which they are authorized to remain;
- d) have been issued a departure order or have been ordered deported and the order has not been stayed or quashed.

6.5 Status as of date application postmarked

It has been determined that the postmark will be considered to be the effective date of application, or 7 days prior to receipt of the application if the postmark is illegible. This decision applies in the case of applications mailed to a CPC where the expiry of status may be a factor.

6.5.1 Out of status

If upon receipt of the application the client's status has expired, the client is to be considered out of status. An A27(2) report should be completed.

6.5.2 Implied status

A person whose visitor status has expired after the application was received at the CPCV will be considered in status until a decision is made on the application. A person who was in status at the time the application was made is entitled to a decision on this application. This does not allow a person to make application for an extension after the expiry date of the visitor status.

The Canadian courts have ruled that the applicant cannot be held accountable for our administrative delays. Therefore, if there is a time lapse between the time of receipt of an application and its review, the client remains in status until a decision on the application is made.

6.5.3 Approval where implied status occurred

When the application is approved, officers should issue the appropriate document. The date of issue shown on the document represents the date a decision was taken, and the decision cannot be backdated. **OFFICERS SHOULD NOT BACKDATE THE DOCUMENT.** Observations can be made in the remarks box of the document explaining that a decision was rendered after the expiration date but that the application was received within validity.

6.5.4 Refusal where implied status occurred

When the application is refused, the client must be informed of the decision. Established procedures are to be followed. The letter to the client must not offer any suggestion that status is implied until eligibility can be met. The only advice which should be given to clients on this matter is a warning as to the expiry date of their status.

Communication

Rules of fairness require that a person who makes an application be informed of the ultimate decision respecting the application. Clients will be considered in status until a decision is made and communicated to them.

A2(4) provides that when a decision is rendered other than in the presence of the person, the person shall be deemed to have received the decision seven days after the decision was sent to the person.

Recording

It is imperative that in these cases an NCB (non-computer based entry) is entered into FOSS so that if the client is approached by Immigration or a police agency, records will be available showing that a decision on the client's application has been reached and communicated to the client.

6.6 Service standards at CPCV

The CPCV will communicate a decision within 25 days of the date posted. Applicants are advised not to contact the CIC or CPCV regarding their application before that date. Enquiries regarding the status of an application are made to the local Telecentre or CIC enquiries line, not to the CPCV.

6.7 Cases which cannot be completed at the CPCV

There will be cases which Immigration Officers cannot complete at the CPCV. These cases will be forwarded to the CIC in the client's area. That office will complete the processing of the application. In these cases, the CPCV sends the client a letter confirming that the application has been referred.

6.8 Documents required with application

The following documents must be provided with application:

- Application Form IMM 1249
- Cost—Recovery Fee
- Letter of Acceptance
- Proof of identity
- Proof of financial support
- CAQ for students destined to Québec

6.9 Reviewing the documentation

Check to ensure that all documents are enclosed with the application and that these have been properly completed.

Québec bound students

For students destined to Québec who are in possession of a valid CAQ, immigration officers are not required to conduct a full assessment. An officer may issue the student authorization after having ensured that the student meets the usual statutory requirements, and that financial resources meet Québec's standards outlined at section 3.3.5.

CIDA and DFAIT

Special processing arrangements for students sponsored by CIDA and DFAIT are outlined throughout these procedures. Officers should ensure that all applicable instructions at section 2.5 are followed carefully.

6.9.1 Form IMM 1249

Check to ensure that Application Form IMM 1249 has been properly completed and signed by the applicant. An application which lacks proper signature should be rejected and returned to the client with appropriate notation.

6.9.2 Cost Recovery Fee

Determine whether a cost—recovery fee is payable and that payment has been included with the application.

Refer to section 2.3.4 for details.

6.9.3 Letter of Acceptance

The fee is \$125 for a student authorization, payable at the time the request is made and should be included with the application. The fee is payable by certified cheque or money order made out to The Receiver General for Canada; Visa or MasterCard.

An application which lacks the proper cost recovery fee should be rejected and returned to the client with appropriate notation.

Refer to section 2.3 for details.

Each application must be accompanied by a Letter of Acceptance from the educational institution which the student will be attending.

Exemption

Dependents of holders of student and employment authorizations are exempt from this requirement.

CIDA and DFAIT

Because of special sponsorship arrangements, it can be assumed that students sponsored by CIDA or DFAIT meet requirements related to acceptance, institution, course of study and language.

Conditional

Conditional letters of acceptance are admissible, and students should benefit from long-term authorizations.

Refer to section 3.2.3 for details.

Using the following guidelines, you should check to ensure that the Letter of Acceptance is complete, and that the course of study meets legislative requirements.

Standard information

The Letter of Acceptance should include the following basic information:

- The name, date of birth, mailing address of student;
- The course for which the student has been accepted;
- The estimated duration or date of completion of course;
- The date on which course begins;
- The last date on which student must register for course;
- The academic year which student will be entering;
- Whether course is full-time or part-time;
- The tuition fee;
- Any condition related to the acceptance;
- Clear identification of the educational institution;
- Licensing information for private institutions.

Refer to section 3.2 for details.

Course of study**Exemption:**

The following criteria do not apply to privately-funded institutions administered by the Post-Private Secondary Education Commission in British Columbia, which are deemed by provincial statute to meet these requirements.

6.9.4 Proof of funds

Requirements:

The Letter of Acceptance must show that the applicant will be pursuing a course of studies which meets at least one of the following regulatory requirements:

- Is at least 6 months in duration and involves at least 24 hours of instruction per week; [17(1)(a)]
- is given by a chartered college or university, or by any other publicly funded institution; [17(1)(b)]
- is recommended by any department or agency of the Canadian or a provincial government; [17(1)(c)]
- is incidental and secondary to the applicant's main purpose for being in Canada; [17(1)(d)]
- involves upgrading of skills or language training and is given at a provincially or federally licensed institution [17(1)(e)].

Refer to sections 3.2.6 and 3.2.7 for details.

The applicant should present a financial document which officers must review to determine that adequate financial resources are available to support the applicant and any accompanying dependants for the first year of the course of study.

CIDA and DFAIT

Single students sponsored by CIDA or DFAIT are deemed to have sufficient funds by virtue of their sponsorship, but must demonstrate that they have sufficient additional funds to support any accompanying dependants.

Refer to sections 3.3.4 and 3.3.5 for assessment formula.

Generally speaking, students enrolled in post-secondary studies will already have satisfied a visa officer of their continuing access to funds. If an application to continue in post-secondary studies is not accompanied by proof of funds, this should not be a barrier to issuing the authorization, provided the applicant is otherwise eligible. Experience has shown that students who have difficulty in maintaining themselves will often not be allowed to continue studies if tuition fees cannot be paid, or will apply for an employment authorization as a temporarily destitute student.

Refer to section 3.3 for details.

6.9.5 Proof of identity

Applicants should provide proof of identity such as a passport, a travel document or official identity document, or photocopies of the following pages: identity pages, date and place of issue and validity date.

Officers must be satisfied that applicants have a valid passport upon presentation of their application – they are not required to have a passport valid for the entire duration of their course of studies.

Persons exempt from a passport requirement [R14(4)] should provide an acceptable personal identification such as citizenship document, national identity document, birth certificate, etc.

6.9.6 Certificat d'acceptation du Québec

Students destined to an educational institution in Québec require a CAQ, unless they are:

- chosen under a government funded program for developing countries as sponsored by CIDA;

- dependants of diplomats accredited to Canada;
- enrolled in a part-time course of less than 20 hours per week;
- enrolled in intensive French or English courses of at least 20 hours per week, for a maximum period of 12 weeks;
- in possession of a Certificat de sélection du Québec (CSQ) when a decision has been made by Canada Immigration to accept to process the application for permanent residence in Canada.

Students who have not finished their course at CAQ expiry

There may be cases where students have not completed their course of study within the initially planned timeframe. In these cases, a new CAQ may not be required, provided studies are finished within twelve months of the CAQ's expiry date. During this period, a new student authorization may be issued without a CAQ, providing the student's program remains unchanged and time required for completion is less than one year. Otherwise, a new CAQ will be required.

Refer to section 2.1 for details.

6.10 Prescribed institutions

Officers must confirm that students are not destined to an institution prescribed in Schedule III of the *Immigration Regulations*.

Refer to section 2.4.1 for details.

6.11 Where concerns exist about institutions

There may be cases when students present a Letter of Acceptance from an institution where concerns exist about its academic or administrative practices. If officers have information about such schools where there is evidence that students never attend, attend infrequently or work illegally, they should pass this information to the CIC Regional office where the institution is located, or to the CPC-Vegreville, or to NHQ/SSE.

6.12 What to do when the application is incomplete

The guide book and forms in each Visitor Application Kit clearly states the information that the applicant must supply and a document checklist is provided as an aid. The following statement is also found in the kit: "Your forms will be returned to you if you omit any of the information requested".

At the CPCV

It is appropriate to make a good faith effort to obtain the required information from the client where there is a reasonable chance that the client has the needed information, or where the client's status will expire prior to the information being returned to the processing office. Officers are to use their judgment in determining the most efficient method of addressing the difficulties. In some cases, a telephone call may best serve the purpose; in others, it may be necessary to return the application and documents to the client with a written request for information.

At the CIC

In addition to seeking information by phone or mail, officers at the CIC may contact the clients asking them to come to the CIC for an interview, or to complete the documentation.

6.13 Criteria for referring CPCV cases to CICs

Although it has been determined that all applications for student authorizations will be processed at CPCV, some will need to be referred to local immigration offices. As a basic principle, the number of cases referred to CICs should be minimized, and should be initiated on the basis that the local CIC will be able to add value in bringing the case to conclusion.

In order to minimize handling, cases referred to a local immigration office for processing will be finalized at that office, and will not be returned to CPCV. However, this does not preclude the same client from submitting a new application at a future time to the CPCV.

The following criteria have been developed to clarify which cases may be transferred:

- a) cases which involve an in-depth assessment of bona fides or degree of hardship and require the use of judgment in order to arrive at a decision;
- b) cases where a refusal decision requires the exercise of discretion;
- c) potential refusals based on criminal, security or medical inadmissibility which could lead to an Act 27(2) report and inquiry;
- d) cases of visitors who are in Canada for more than one year where it has not been clearly established that their extended stay is for legitimate purposes;
- e) cases of suspected fraud of statutory eligibility criteria;
- f) cases for which regional offices or NHQ have generated a referral;
- g) cases where it is necessary to interview the client in order to obtain information or clarification of key points;
- h) cases where enforcement action may be indicated, including all 27(2) cases which are not resolved through reinstatement or the issuance of a Minister's Permit;
- i) cases identified for referral by the CPCV Program Analysis Unit.

6.14 Procedures for referring cases from CPCV to CIC

When a case is referred to a local CIC, the CPCV will provide full reasons for referral. The FOSS/WIP screen will be completed and a copy of the letter sent to the client forwarded to the local immigration office.

6.15 Negative decision by CPCV

CPCV refusal decisions will be limited to applications which fail to meet established eligibility criteria.

Basis for refusal

It is appropriate to make a good faith effort to obtain the required information from the client where there is a reasonable chance that the client has the needed information, or where the client's status will expire prior to the information being returned to the CPCV. Where the information cannot be obtained, the application should be refused.

The department is fully satisfied that the application guidebook is a valid and complete self-assessment tool. Where the client has failed to provide the information or documentation requested in the kit, then refusal is appropriate.

Refusal of an application is a serious step and should not be done hastily or for inappropriate reasons. Officers must distinguish between cases where the client has failed to provide information that is necessary to determine eligibility, and those cases where the information missing is non-essential.

It must be remembered that the underlying assumption of the mail-in system is that our clients are honest and law-abiding individuals. In cases where the client states a fact, officers should assume that the fact stated is true unless they have reasonable evidence to the contrary.

Advising the client

The client must be advised in writing, and full cost recovery fees must still be collected. When advising the client of the refusal, officers must be guided by the principals of fairness and natural justice. They must provide a full and complete explanation to the client of the actual reason for refusal.

CIDA and DFAIT

Refer to section 6.17.

Recording a refusal

In order to accurately record a refusal, officers must enter an NCB (non-computer based entry) on the system. This entry results in the automatic capture of the necessary data.

6.16 Interviews by CICs

In some circumstances, when CICs are reviewing cases referred by the CPCV, it may be necessary to interview clients. Such circumstances may include:

- a) if there are questions or doubts concerning clients' reasons for wishing to remain in Canada, the arrangements made for their care and support, and their ability or willingness to leave Canada;
- b) where the officer intends to refuse and needs more information before finalizing the case.

6.17 Negative decision by CIC

When the application is refused, the client must be advised of the decision and of the reasons for refusal. A written decision is not necessary in every case; in some cases, it could take the form of an oral communication.

Counsel client

Counsel the client regarding the possible consequences of studying in Canada without authorization. Remind the client who has valid visitor status of the date that his/her visitor status will expire. Inform clients of what action they can take to become eligible for student authorizations.

CIDA and DFAIT

Refer to section 6.18.

Recording a decision

It is imperative in these cases that an NCB (non-computer based entry) be entered into FOSS. This entry results in the automatic capture of the necessary data, providing a record for Immigration Centres or police agencies showing that a decision on the client's application has been reached and communicated to them.

6.18 Negative decisions of CIDA and DFAIT students

When a CIDA student is found inadmissible, the visa officer will report the case to the local CIDA representative or to the CIDA NHQ Canadian Partnership Branch representative listed at section 2.5.5 b).

When a DFAIT student is found inadmissible, the visa officer will report the case to the International Council for Canadian Studies, as listed at section 2.5.7 b).

6.19 Approving the application

If you decide to grant status to a person as a student, you must:

- decide on the validity period of the student authorization;
- decide whether to impose terms and conditions;
- issue a student authorization;
- issue an employment authorization, if required.

6.19.1 Validity period

The following are general guidelines which apply:

Post secondary

Issue long-term authorizations based on the length of time the student will require to complete the current course of study, plus an additional three months to allow the student to prepare to return home or to arrange for post-graduate employment under E-08. Long-term authorizations apply regardless of the fact that the official acceptance letter from the university may only be valid for one year at a time.

Exceptions to this policy include situations where concerns exist about the student's financial means which are not strong enough to result in a refusal, or situations where concerns exist about the institution's academic or administrative practices. In these cases, authorizations should be limited to one year.

Primary and secondary

Issue authorizations on a year-to-year basis unless students are dependants of persons with long-term authorizations, provided the period requested does not exceed that which has been given to the head of the family.

Québec

Issue authorizations corresponding to the validity of the CAQ.

CIDA

Issued yearly authorizations.

DFAIT

Issue an initial authorization for one year with renewal for the tenure of the student's award.

Statesman and special category country

Issue a one-year authorization with yearly extensions. List of countries included in APPENDIX C of IC 2, and processing procedures outlined in IC 2, section 44.

Refer to section 3.7 for details.

6.19.2 Terms and Conditions

Terms and Conditions are contained in FOSS.

Required for all students attending educational institutions, other than primary and secondary schools:

attend an approved **type** of institution, without specifying which institution or program.

May be imposed at the discretion of the officer:

- a) prohibited against engaging in employment;
- b) attend a university, college or other institution that you specify by name; this does not apply to primary or secondary students;
- c) leave Canada by a specific date;
- d) prohibit from engaging in employment unless medical requirements have been met;
- e) report for medical surveillance, examination or treatment.

Refer to section 3.6 for details.

6.19.3 Completing IMM 1442

Prepare the student authorization Form 1442 by entering the data into the FOSS computer system and having it generate the document on the Full Document Entry printer.

Québec Student

Inscribe the number and expiry date of the CAQ in FOSS.

CIDA Student

Identify CIDA students with code 599 on the authorization.

DFAIT Student

Identify DFAIT students sponsored under the Commonwealth Scholarship and Fellowship Plan by Code 506 on the authorization. No special notation is required for Government of Canada Award students.

6.19.4 Employment authorization

Refer to table in APPENDIX A for exemptions

On campus

Full-time students registered in a degree or diploma-granting course are allowed to work on the campus of the institution at which they are registered without the need for an employment authorization. Officers should include the following notation on the student authorization:

“May accept employment on the campus of the institution at which the holder is registered in full-time studies”.

Validation exempt

The following students require an employment authorization, but are exempt from validation under the code indicated at right:

Spouses of students EO7

Post graduation employment E08

CIDA students D30

Coop education and employment integral to studies D35

Destitute students C05

6.20 Change of status of CIDA and DFAIT students

Students petitioned by a university E30
 International Student and Young Worker programs E35
 Refer to APPENDIX B and APPENDIX C for E35 Programs.

CIDA and DFAIT students are required to return to their country of residence once their study program is completed. As a requirement of admission, students must sign a Consent to Release Information Form. When CIDA or DFAIT sponsored students, or their dependants, make an application to change their status from student to permanent resident or submit a refugee claim, officers should contact the sponsoring agency to request a copy of the individual Consent to Release Information Form. Once this form is received, officers should advise CIDA or DFAIT of the application for change of status.

CIDA address at section 2.5.5 b); DFAIT address at 2.5.7 b).

Officers will then proceed to assess individual cases in the usual manner.

6.21 Recording a decision

It is important for officers to report all approved and refused decisions in FOSS.

6.21.1 Approved applications

FOSS automatically records and counts any documents produced. Documents prepared by hand must be entered into FOSS via Status Entry and are thus also automatically recorded.

6.21.2 Refused applications

Information concerning all refused applications must be entered as an NCB (non-computer based entry) into FOSS. This entry results in the automatic capture of the necessary data.

6.22 Releasing information

Refer to section 2.2 for complete information on the release of information and the application of the *Privacy Act*.

APPENDIX A
STUDENT EMPLOYMENT

For full instructions, refer to appropriate manual section indicated in column at right.

CATEGORY	EMPLOYMENT AUTHORIZATION	VALI-DATION EXEMPT CODE	VALIDITY PERIOD	GENERAL ELIGIBILITY	MANUAL SECTION
ON CAMPUS EMPLOYMENT	Exempt 19(1)(x)	Not applicable	Duration of S.A.	Full time student in degree/diploma granting course; Work restricted to campus of institution where registered	2.6.2
ON-CAMPUS EMPLOYMENT FOR GRADUATE, TEACHING OR RESEARCH ASSISTANTS	Exempt 19(1)(x)	Not applicable	Duration of S.A.	Full time student at approved institution; work to be performed directed by department head; work may take place outside campus at affiliated research or similar institute.	2.6.2
DESTITUTE STUDENTS	Required	Exempt C05	Coincide with term of study	Students on valid student authorizations who have become destitute due to circumstances outside their control.	2.6.3
CIDA STUDENTS	Required	Exempt D30	Term of S.A.	Students sponsored by CIDA when intended employment is part of study program arranged by CIDA.	2.6.4 2.5.5
EMPLOYMENT FORMS INTEGRAL PART OF COURSE OF STUDY	Required	Exempt D35	Term of S.A.	Students whose intended employment forms integral part of course of study such as Undergraduate co-op Programs; some programs offered by career colleges or language schools; some high school programs such as Grade 11-12 students in B.C.	2.6.5
SPOUSES OF STUDENTS	Required	Exempt E07	Coincide with spouse's S.A.	Spouses of full-time students are eligible for open or open/restricted employment authorizations, depending on medical requirements having been met.	2.6.6

CATEGORY	EMPLOYMENT AUTHORIZATION	VALI-DATION EXEMPT CODE	VALIDITY PERIOD	GENERAL ELIGIBILITY	MANUAL SECTION
EMPLOYMENT AFTER GRADUATION	Required	Exempt E08	12-month cumulative; One time only	Students who have graduated from post-secondary institution, in possession of valid student authorization, whose employment must be consistent with recently completed course of study and which must commence within 60 days of issuance of marks.	2.6.7
STUDENTS ON SCHOLARSHIP PETITIONED BY A UNIVERSITY	Required	Exempt E30		Students who have been accepted on an academic or athletic scholarship, petitioned by the University, allowed to take employment arranged by the institution.	2.6.8
INTERNATIONAL STUDENT & YOUNG WORKER EMPLOYMENT PROGRAMS	Required	Exempt E35	From 1 to 12 months	Participants in a number of programs usually based on reciprocity or exchanges, outlined in this Chart.	2.6.9 APPENDIX B APPENDIX C

APPENDIX B
INTERNATIONAL STUDENT AND YOUNG WORKER EMPLOYMENT
PROGRAMS – ALPHABETICAL LIST BY PROGRAM –
VALIDATION EXEMPTION CODE E35

NAME OF PROGRAM	COUNTRY	PARTICIPATING ORGANIZATION	AGE	TYPE OF AUTHORIZATION	VALIDITY PERIOD MAXIMUM
Agence Québec	Belgium	Wallonie Bruxelles	18–30	employer specific	4 to 12 months
Association Québec–France	France		18–30	employer specific	up to 6 months
Canada Switzerland Young Trainee Exchange Program	Switzerland		18–30	employer specific in field of study	18 months
Canada Netherlands Young Workers Exchange Program	Netherlands		18–30	employer specific in field of study	12 months
Canada Germany Young Worker Exchange Program	Germany		18–30	employer specific in field of study	18 months
Canada Finland Career Development Program	Finland		18–30	employer specific career related	18 months
Canada–France Young Worker Exchange Program 1956 Agreement	France		18–35	employer specific in field of study	18 months
Canadian Association of University Teachers of German Workstudent Program	Germany		18–30		2 to 3 months during the summer

NAME OF PROGRAM	COUNTRY	PARTICIPATING ORGANIZATION	AGE	TYPE OF AUTHORIZATION	VALIDITY PERIOD MAXIMUM
Canadian Crossroad International (CCI/PAQ)	Multilateral exchange	Programme Africain au Québec Carrefour Canadien International	18-30	employer specific	4 to 5 mths, May to Sept. or Sept. to May
Comité conjoint des Races de boucherie	France		18-30	employer specific	12 months
Cooks and Chefs Apprentice Exchange Program	United States		18-30	employer specific	12 months
German-Canadian Society Program (DKG)	Germany		18-30	employer specific open*	3, mid-July to end October
International Cooperative Education Camosun College, B.C.	Czech	Technical University of Ostrava;	18-30	employer specific	12 months
International Cooperative Education Community College of St. Andrews New Brunswick	England	Thames Valley University, London; Highbury College, London;	18-30	employer specific	12 months
International Cooperative Education Georgian College, Ont.	U.K.	Glasgow College of Food Technology;	18-30	employer specific	12 months
	Italy	Scula Internazionale di Scienze Turistiche			
International Cooperative Education McMaster University, Ontario	France	Université de Compiègne	18-30	employer specific	12 months
International Cooperative Education Queen's University	Germany	University of Karlsruhe	18-30	employer specific	12 months
International Cooperative Education Ryerson Polytechnical Institute, Ont.	U.K.	Teesside Polytechnic	18-30	employer specific	12 months

NAME OF PROGRAM	COUNTRY	PARTICIPATING ORGANIZATION	AGE	TYPE OF AUTHORIZATION	VALIDITY PERIOD MAXIMUM
International Cooperative Education, Sheridan College	Germany	Berussakademie	18-30	employer specific	12 months
International Cooperative Education Sir Standord University, Ontario	Germany Japan	Breussakademie; Chuo College;	18-30	employer specific	12 months
International Cooperative Education University of Ottawa, Ont.	France	École U. d'ingénieurs de Lille;	18-30	employer specific	12 months
International Cooperative Education University of Victoria, B.C.	Australia	Swinburne Institute of Technology; Ballarat University;	18-30	employer specific	12 months
	France	Institut des Services appliqués, Rennes;			
	Germany	Fachhochschule Koflsruhe;			
	Netherlands	Hogeschool West Brabant;			
	U.K.	University of Surrey;			
	U.S.A.	U. of Philadelphia, Drexel;			
	Russia	Moscow State University;			

NAME OF PROGRAM	COUNTRY	PARTICIPATING ORGANIZATION	AGE	TYPE OF AUTHORIZATION	VALIDITY PERIOD MAXIMUM
International Cooperative Education University of Waterloo	Australia	University of New South Wales;	18-30	employer specific	12 months
	France	Université de Compiègne; Université de Nantes; MICEFA, Triade;			
	Germany	Technische U., Braunschweig; U. of Paderburn;			
	Ireland	Ulster Polytechnic;			
	Netherlands	Trente University; Eindhoven University;			
	U.K.	University of Leeds;			
	U.S.A.	University of Cincinnati; Northeastern University.			
	Multilateral exchange		18-30	employer specific	18 months
International Association for Exchange of Students of Economics and Commerce (AIESEC)					
International Visitor Exchange Program of the Mennonite Central Committee of Canada (IVEP)	Multilateral exchange	Mennonite Central Committee, Winnipeg, Manitoba	18-20	employer specific	12 months
International Rural Exchange (IRE)	Multilateral exchange		18-30	employer specific	6-12 months
International Fund for Ireland	Ireland		18-30	employer specific open*	12, with possible 12 month extension
International Association for Exchange of Student for Technical Experience (AIESTE)	Multilateral exchange		18-30	employer specific	12 months

NAME OF PROGRAM	COUNTRY	PARTICIPATING ORGANIZATION	AGE	TYPE OF AUTHORIZATION	VALIDITY PERIOD MAXIMUM
International Agricultural Exchange (IAEA)	Multilateral exchange		18-30	employer specified as IAEA	9 months, Feb. to Nov. 30
Mouvement Québécois des Chantiers	Armenia Belgium Czech France Germany Lithuania Republic of Belarus Russia Slovakia Spain	Republic Headquarters of Student Brigades; Voluntary Service of Armenia (HUU) Compagnons Bâtisseurs; Agence Québec; Wallonie Bruxelles; Centre for International Youth Exchange and Tourism; Compagnons Bâtisseurs; Concordia; Rempart; Vereinigung Junger Freiwilliger (Union Young Volunteers VJF) Center of Student Activities Belarussian Association of International Yough Work (ATM) Youth Voluntary Service NEX – Slovakia (Association for Int. Yough Exchange & Tourism) Institut Catala de Serveis a la Joventut	18-25	employer specific	1 month
Office Franco-Québécois pour la jeunesse	France		18-30	employer specific	12 months
Student Work Program Abroad See separate attachment					

NAME OF PROGRAM	COUNTRY	PARTICIPATING ORGANIZATION	AGE	TYPE OF AUTHORIZATION	VALIDITY PERIOD MAXIMUM
The Gap Activity Projets Limited	U.K.	Examples of participating Canadian schools are Ashbury College, Upper Canada College, St. John's College.	18-30	employer specific	12
University of Alberta	Sweden	Swedish University of Agricultural Sciences; University of Helsinki;	18-30	employer specific	4 months, from May to September.
University of Ottawa	Netherlands	Haagse Hogeschool	No restriction	open	4 - 8 months
Volunteer Abroad Program of the Canadian Federation of Student Services	Australia Multilateral	Swinburne Institute	No restriction 18-30	open employer specific volunteer for camps	4 - 8 months 6 months, between June & end of Sept.
Working Holiday Program See separate attachment					
Young Farmers Québec	Luxembourg		18-30	employer specific	12

**Note: When issuing an "open" employment authorization, if the applicant has not passed an immigration medical, an occupation restriction must be specified. Once the applicant has completed the medical requirements the term and condition can be removed.*

STUDENT WORK PROGRAM ABROAD (SWAP)			
COUNTRY	AGE	TYPE OF AUTHORIZATION	VALIDITY PERIOD MAXIMUM
Australia	18-25 26-30 if entry is reciprocal	open*	12 months
Czechoslovakia	18-30	open*	4 months from 1 June to 31 October
Finland	18-30	open*	3 months

STUDENT WORK PROGRAM ABROAD (SWAP)			
COUNTRY	AGE	TYPE OF AUTHORIZATION	VALIDITY PERIOD MAXIMUM
France Stagiaire apprenticeship	18-30	open* employer specific to field of study	4 months from mid-June to end October 9 months maximum
Germany	18-30	open*	3 to 4 months from July 1 to October 31
Ireland	18-30	open*	4 to 6 months
Jamaica	18-30	open*	4 months
Japan	18-25 or 26-30 at discretion of visa officer	open*	12 months
New Zealand	18-30	open*	6 months
Poland	18-30	open*	4 months from 1 June to 31 October
South Africa	18-30	open*	6 months; enrolled fulltime in post secondary studies; have medical insurance; have return ticket/ticket to a 3rd country and \$1,000;
The Netherlands	18-30	employer specific	6 months
United Kingdom	18-29, full-time or part-time student or graduates of the year	open*	12 months
United States	18-30	open*	6 months from 1 May to end October

**Note: When issuing an "open" employment authorization, if the applicant has not passed an immigration medical, an occupation restriction must be specified. Once the applicant has completed the medical requirements the term and condition can be removed.*

WORKING HOLIDAY PROGRAM (WHP)			
COUNTRY	AGE	TYPE OF AUTHORIZATION	VALIDITY PERIOD <i>maximum</i>
Australia	18-25 26-30 if entry is reciprocal	open*	12 months
Finland	18-30	employer specific	6 months
France	18-30	employer specific	3 months
Germany	18-30	employer specific	3 to 6 months
Ireland	18-30	employer specific	12 months
Japan	18-25 or 26-30 at discretion of visa officer	open*	12 months
Korea	18-25	open	6 months
New Zealand	18-30	open*	12 months
Sweden	18-30	employer specific	6 months
The Netherlands	18-30	employer specific in field of study	6 months
United Kingdom	18-29	employer specific	6 – 12 months

*Note: When issuing an "open" employment authorization, if the applicant has not passed an immigration medical, an occupation restriction must be specified. Once the applicant has completed the medical requirements the term and condition can be removed.

APPENDIX C
INTERNATIONAL STUDENT AND YOUNG WORKER EMPLOYMENT –
ALPHABETICAL LIST BY COUNTRY – VALIDATION EXEMPTION CODE E35

Note: When issuing an open employment authorization, if the applicant has not passed an immigration medical an occupation restriction must be specified. See section 3.6.3. Once the applicant has completed the medical requirements, the term and condition can be removed.

COUNTRY	NAME OF PROGRAM	ELIGIBILITY	TYPE OF WORK PERMIT	DURATION
Armenia	Mouvement Québécois des Chantiers/Republican Headquarters of Student Brigades—Voluntary Service of Armenia (HUJ)	18–30 years of age	employer specific	1 month maximum
Australia	Working Holiday Program (WHP)	18–25 years of age 26–30 if their entry is reciprocal	open *	12 months maximum
Australia	Student Work Abroad Program (SWAP)	18–25 years of age 26–30 if their entry is if mutual advantage	open *	12 months maximum
Belgium	Agence Québec/Wallonie—Bruxelles	18–30 years of age	employer specific	4–12 months maximum
Belgium	Mouvement Québécois des Chantiers/Compagnons Bâtisseurs/Agence Québec/Wallonie Bruxelles	16–25 years of age	employer specific	1 month maximum
Czech Republic	Mouvement Québécois des Chantiers/Centre for International Youth Exchange and Tourism	18–25 years of age	employer specific	1 month maximum
Czechoslovakia	Student Work Abroad Program (SWAP)	18–30 years of age	open *	4 months from 1 June to 31 October
Finland	Working Holiday Program (WHP)	18–30 years of age	employer specific	6 months maximum
Finland	Canada–Finland Career Development Program	18–30 years of age	employer specific career related	18 months maximum
Finland	Student Work Abroad Program (SWAP)	18–30 years of age	open *	3 months maximum

COUNTRY	NAME OF PROGRAM	ELIGIBILITY	TYPE OF WORK PERMIT	DURATION
France	Working Holiday Program (WHP)	18-30 years of age	employer specific	3 months maximum
France	Student Work Abroad Program (SWAP) - stagiaire apprenticeship	18-30 years of age	open * - employer specific in field of study	4 months maximum from mid-June to end of October - 9 months maximum
France	Canada-France Young Worker Exchange Program 1956 Agreement	18-35 years of age	employer specific in field of study	18 months maximum
France	Association Québec France	18-30 years of age	employer specific	up to 6 months maximum
France	Office Franco-Québécois pour la jeunesse	18-30 years of age	employer specific	12 months maximum
France	Mouvement Québécois des Chantiers/Compagnons Bâtisseurs	18-25 years of age	employer specific	1 month maximum
France	Mouvement Québécois des Chantiers/Concordia	18 to 25 years of age	employer specific	1 month maximum
France	Mouvement Québécois des Chantiers/Rempart	18 to 25 years of age	employer specific	1 month maximum
France	Comité Conjoint des Races de Boucherie	18 to 30 years of age	employer specific	12 months maximum
Germany	Student Work Abroad Program (SWAP/CIEE)	18-30 years of age	open *	3-4 months maximum from July 1st to 31st of October
Germany	Mouvement Québécois des Chantiers/Vereinigung Junger Freiwilliger (Union of Young Volunteers) (VJF)	18-25 years of age	employer specific	1 month maximum
Germany	Working Holiday Program (WHP)	18-30 years of age	employer specific	3-6 months maximum
Germany	Canada-Germany Young Worker Exchange Program	18-30 years of age	employer specific in field of study	18 months maximum
Germany	German-Canadian Society Program (DKG)	18-30 years of age	employer specific and open *	3 months from mid-July to end of October

COUNTRY	NAME OF PROGRAM	ELIGIBILITY	TYPE OF WORK PERMIT	DURATION
Germany	Canadian Association of University Teachers of German Workstudent program (CAUTG)	18–30 years of age		2–3 months during the summer months
Ireland	Working Holiday Program (WHP)	18–30 years of age	employer specific	12 months maximum
Ireland	Student Work Abroad Program (SWAP)	18–30 years of age	open *	4–6 months maximum
Ireland	International Fund for Ireland	18–30 years of age	employer specific/ open	12 months with a possible 12-month extension on approval of EAITC
Jamaica	Student Work Abroad Program (SWAP)	18 to 30 years of age	open *	4 months maximum
Japan	Working Holiday Program (WHP)	18–25 years of age 26–30 years of age at the discretion of visa officers	open *	12 months maximum
Japan	Student Work Abroad Program (SWAP)	18–25 years of age 26–30 years of age at the discretion of visa officers	open *	12 months maximum
Korea	Working Holiday Program (WHP)	18–25 years of age	open	6 months
Lithuania	Mouvement Québécois des Chantiers/Center of Student Activities (Litmina)	18–30 years of age	employer specific	1 month maximum
Luxembourg	Young Farmers Quebec/Luxembourg	18–30 years of age	employer specific	12 months maximum
Multilateral Exchange	International Agricultural Exchange (IAEA)	18–30 years of age	employer should be specified as IAEA	February to November 30 each year
Multilateral Exchange	International Rural Exchange (IRE)	18–30 years of age	employer specific	6–12 months maximum
Multilateral Exchange	Canadian Crossroad International/Carrefour Canadien International – Programme Africains au Québec Quebec (CCI)/(PAQ)	18–30 years of age	employer specific	4–5 months either from May to September or September to December

<i>COUNTRY</i>	<i>NAME OF PROGRAM</i>	<i>ELIGIBILITY</i>	<i>TYPE OF WORK PERMIT</i>	<i>DURATION</i>
Multilateral Exchange	International Visitor Exchange Program of the Mennonite Central Committee of Canada (IVEP)	18–30 years of age	employer specific	12 months maximum beginning in August
Multilateral Exchange	International Association for Exchange of Student for Technical Experience (IAESTE)	18–30 years of age	employer specific	12 months maximum
Multilateral Exchange	International Association for Exchange of Students of Economics and Commerce (AIESEC)	18–30 years of age	employer specific	18 months maximum
Multilateral Exchange	Volunteer Abroad Program of the Canadian Federation of Student Services	18–30 years of age	employer specific (volunteer for camps)	6 months maximum between June and end of September

COUNTRY	NAME OF PROGRAM	ELIGIBILITY	TYPE OF WORK PERMIT	DURATION
Multilateral Exchange	<p>International Cooperative Education (ICE) – Fanshawe College, Ont./New Hampshire College, USA; or</p> <p>Sheffield Polytechnic, UK</p> <p>U. of Waterloo, Ont./U. of New South Wales, Australia; or</p> <p>U. of Compiègne, France; or</p> <p>U. of Nantes, France; or MICEFA, Triade, France; or Technische U. Braunschweig, Germany; or U. of Paderborn, Germany; or Ulster Polytechnic, Ireland; or Twente University, The Netherlands; or Eindhoven University, The Netherlands, or U. of Leeds, UK; or U. of Cincinnati, USA; or Northeastern U., USA;</p> <p>Community College St Andrew's New Brunswick/Thames Valley University, London England or the Highbury College, London, England</p> <p>U. of Victoria, BC/Swinburne Institute of Technology, Ballarat U., Australia; or Institut des Services appliqués Rennes, France; or Fachhochschule Koflsruhe, Germany; or Hogeschool West Brabant, The Netherlands; or University of Surrey, UK; or U. of Philadelphia Drexel, USA; or Moscow State University, Russia</p> <p>U. of Ottawa, Ont./École U. d'ingénieurs de</p>	18–30 years of age	employer specific	12 months maximum

<i>COUNTRY</i>	<i>NAME OF PROGRAM</i>	<i>ELIGIBILITY</i>	<i>TYPE OF WORK PERMIT</i>	<i>DURATION</i>
Multilateral Exchange	Sheridan College, Ont./Berussakademie, Ge	18–30 years of age	employer specific	12 months maximum
	Ryerson Polytechnical Inst., Ont./Teesside Polytechnic, UK			
	Camosun College, BC/Technical U. of Ostrava, Czechoslovakia			
	Georgian College, Ont./Glasgow College of Food Technology, UK; or Scula Internazionale di Science Turistiche, Italy			
	Queens University, Ont./U. of Karlsruhe, Germany			
	SirSandford Fleming, Ont./Berussakademie, Germany/Chuo College, Japan			
	McMaster University, Ont./U. of Compiègne, France			
New Zealand	Student Work Abroad Program (SWAP)	18–30 years of age	open *	6 months maximum
New Zealand	Working Holiday Program (WHP)	18–30 years of age	open *	12 months maximum
Poland	Student Work Abroad Program (SWAP)	18–30 years of age	open *	4 months from 1 June to 31 October
Republic of Belarus	Mouvement Québécois des Chantiers/Belarusian Association of International Youth Work (ATM)	18–25 years of age	employer specific	1 month maximum
Russia	Mouvement Québécois des Chantiers/Youth Voluntary Service	18–30 years of age	employer specific	1 month maximum
Slovakia	Mouvement Québécois des Chantiers/INEX – Slovakia (Assn. for Int. Youth Exchange & tourism)	18–30 years of age	employer specific	1 month maximum

<i>COUNTRY</i>	<i>NAME OF PROGRAM</i>	<i>ELIGIBILITY</i>	<i>TYPE OF WORK PERMIT</i>	<i>DURATION</i>
South Africa	Student Work Program Abroad	18-30 years of age	open*	6 months; enrolled fulltime in post secondary studies; have medical insurance; have return ticket/ticket to 3rd country & \$1,000
Spain	Mouvement Québécois des Chantiers/Institut Catala de Serveis a la Joventut	18-30 years of age	employer specific	1 month maximum
Sweden	Working Holiday Program (WHP)	18-30 years of age	employer specific	6 months maximum
Sweden	University of Alberta/Swedish University of Agricultural Sciences	18-30 years of age	employer specific	4 months from May to September
Switzerland	Canada-Switzerland Young Trainee Exchange Program	18-30 years of age	employer specific in field of study	18 months maximum
The Netherlands	Canada-Netherlands Young Workers Exchange Program	18-30 years of age	employer specific in field of study	12 months maximum
The Netherlands	Working Holiday Program (WHP)	18-30 years of age	employer specific in field of study	6 months maximum
The Netherlands	Student Work Abroad Program (SWAP)	18-30 years of age	employer specific	6 months maximum
United Kingdom	Working Holiday Program (WHP)	18-29 years of age	employer specific	6-12 months maximum
United Kingdom	Student Work Abroad Program (SWAP-BUNAC)	18-29 years of age full-time or part-time student or graduates of the year	open *	12 months maximum
United Kingdom	The Gap Activity Projects Limited	18-30 years of age	employer specific	12 months maximum
United Kingdom	Mouvement Québécois des Chantiers/United Nations Association Wales (UNA Wales, IVS)	18-25 years of age	employer specific	1 month maximum

<i>COUNTRY</i>	<i>NAME OF PROGRAM</i>	<i>ELIGIBILITY</i>	<i>TYPE OF WORK PERMIT</i>	<i>DURATION</i>
United States	Student Work Abroad Program (SWAP)	18–30 years of age	open *	6 months maximum from 1 May to end of October
United States	Cooks and Chefs Apprentices Exchange Program	18–30 years of age	employer specific	12 months maximum
United States	Mouvement Québécois des Chantiers/Council of International Educational Exchange (CIEE)	18–30 years of age	employer specific	1 month maximum

APPENDIX D
EXEMPTIONS FROM REQUIREMENT TO APPLY ABROAD

For precise legal interpretation, please refer to noted Regulations or section 1.2 of this chapter.

<i>AUTHORIZATION NOT REQUIRED BEFORE ARRIVING AT POE R15(2) Section 1.2.6</i>	<i>APPLICATION TO BE PROCESSED AT POE R15(3) Section 1.2.6</i>	<i>PERSONS WHO MAY APPLY FROM WITHIN CANADA R16 Section 1.2.7</i>	<i>EXEMPT FROM AUTHORIZATION R14.2 and R14.3 Section 3.1.3</i>
Dependants of members of military personnel stationed in Canada from a country described at APPENDIX G.	Nationals of the United States	Dependants of members of military personnel	Dependants of diplomats
Dependants of members of clergy who are performing religious duties in Canada	Persons who have been lawfully admitted to the U.S. for permanent residence	Dependants of members of clergy who are performing religious duties in Canada	Visitors attending short-term language courses of three-month's duration or less.
Dependants of media personnel who are covering Canadian events	Residents of Greenland	Dependants of media personnel who are covering Canadian events	Persons who intend to enrol in courses of studies that are not academic, professional or vocational in nature.
Dependants of athletes and coaches who are employed with Canadian based teams or working as referees and umpires;	Residents of St-Pierre & Miquelon	Dependants of persons coming to Canada to engage in athletic or other sport activities or events	Pre-school children who attend day care centres or nursery schools.
Dependants of persons in possession of a valid and subsisting student authorization		Dependants of persons in possession of a valid and subsisting student authorization	Visitors who have bought tour packages which include a study content, such as elderhostel programs.
Dependants of persons in possession of a valid employment authorization		Dependants of persons in possession of a valid employment authorization	

AUTHORIZATION NOT REQUIRED BEFORE ARRIVING AT POE R15(2) Section 1.2.6	APPLICATION TO BE PROCESSED AT POE R15(3) Section 1.2.6	PERSONS WHO MAY APPLY FROM WITHIN CANADA R16 Section 1.2.7	EXEMPT FROM AUTHORIZATION R14.2 and R14.3 Section 3.1.3
Dependants of representatives of foreign governments sent by that government to take up duties with a federal or provincial agency under an exchange agreement with Canada;		Dependants of representatives of foreign governments working under an exchange agreement with the Canadian or a provincial government.	
Nationals of the United States		Persons whose application for a student authorization has been approved by a visa officer but to whom the authorization has not been issued	
Persons who have been lawfully admitted to the United States for permanent residence		Persons whose course of study is incidental and secondary to the main purpose of their presence in Canada	
Residents of Greenland		Persons who have been authorized to remain in Canada as visitors and were in possession of a valid student authorization at the time they ceased to be visitors.	
Residents of St-Pierre & Miquelon		Persons whose refugee claims have been referred to the Refugee Division for decision and their dependants.	
Persons whose application for a student authorization has been approved in writing by a visa officer but to whom the authorization has not been issued		Persons who apply for student authorizations to take courses which are incidental or secondary to their main purpose for being in Canada.	
		Persons in possession of a permit issued by the Minister under section 37 of the Act or their dependants.	

APPENDIX E
LIST OF COUNTRIES WHERE MEDICALS ARE NOT REQUIRED
(see section 3.4.2)


This Appendix lists only those countries where medicals are not required. For full list of Medical Requirements and Details by Country, see IR 3.

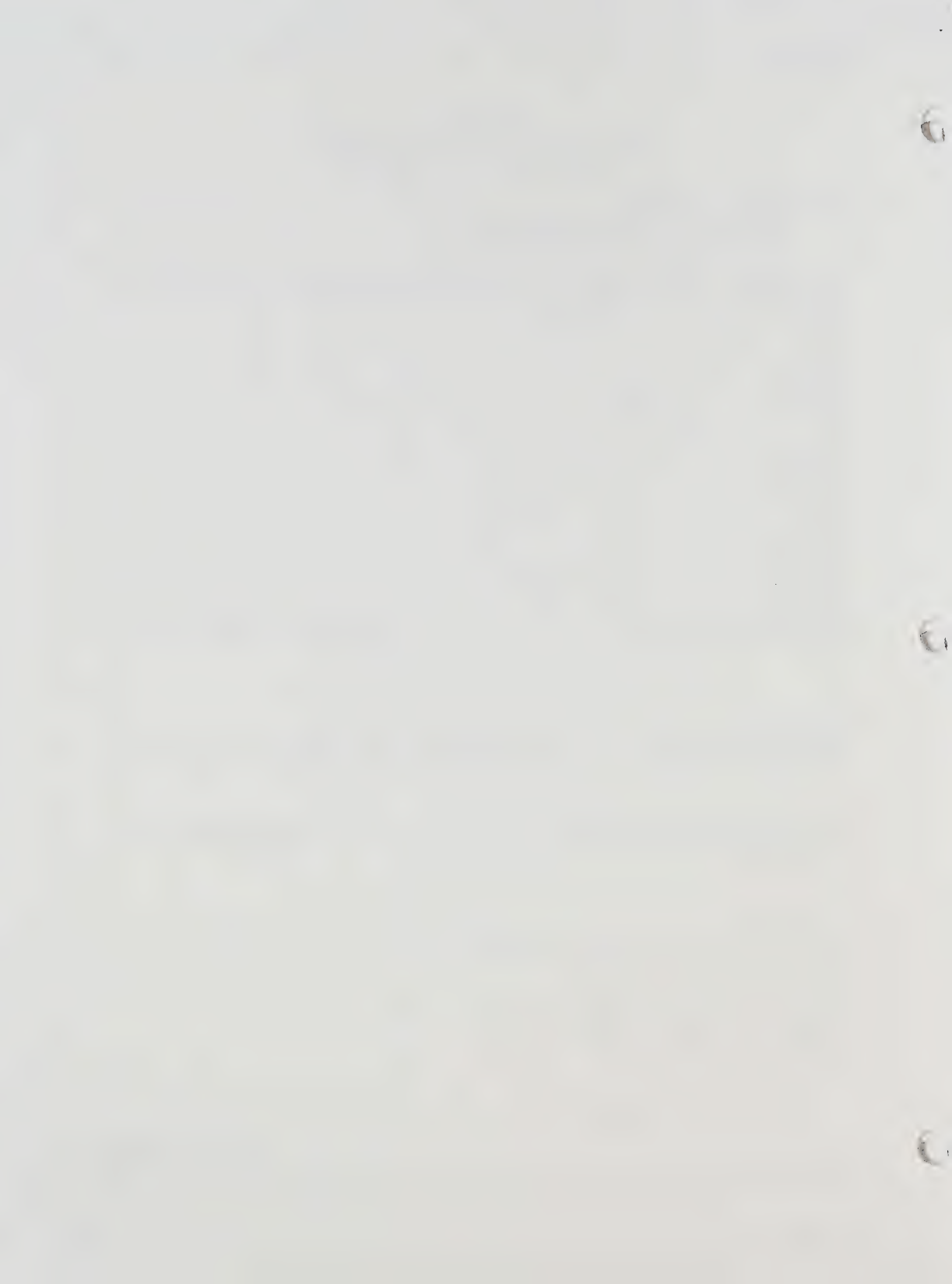
Aldernay	Islands Falkland
Andorra	Islands Faroe
Australia	Islands Orkney
Austria	Islands Tokelau
Bahamas	Isle of Man
Belgium	Israel
Bermuda	Italy
Brechou	Japan
Cambodia	Jersey
Crozet Arch	Liechtenstein
Denmark	Luxembourg
Fiji	Malta
Finland	Monaco
France	Netherlands
Germany	New Zealand
Gibraltar	Northern Ireland
Great Britain	Norway
Greenland	Romania
Guernsey	San Marino
Holy See	Sark
Iceland	Saudi Arabia
Ireland	Scotland
Island Christmas	Spain
Island Lord Howe	St-Pierre et Miquelon
Island Niue	Sweden
Island Norfolk	Switzerland
Island Pitcairn	Terre Australes & Antartiques
Islands Balearic	United States of America
Islands Channel	Vatican City State
Islands Cocos	Venda
Islands Cook	Wales

APPENDIX F
PROVINCIAL HEALTH INSURANCE PLANS ELIGIBILITY OF FOREIGN
STUDENTS AND DEPENDANTS
(see section 3.4.3)

<i>PROVINCE</i>	<i>ELIGIBILITY OF APPLICANT</i>		<i>DEP</i>
British Columbia	Yes	First day of 3rd month, if student authorization is valid for 6 or more months. Not retroactive. Coverage for period of student authorization. Medical insurance premiums are levied.	Yes
Northwest Territories	Yes	Date of entry with full-time student authorization.	Yes
Yukon	No	Private insurance plans are available.	No
Ontario	No	Private insurance plans are available.	No
Manitoba	No	Private insurance plans are available.	No
Saskatchewan	Yes	Immediate. For duration of full-time student authorization for school in Saskatchewan. For health services in Saskatchewan only.	Yes
Alberta	Yes	With full-time student authorization and with the intention of residing in Alberta for 12 consecutive months. Coverage is date of entry if registered within 3 months. If not registered within 3 months, effective date will be assigned. Health insurance premiums are levied.	Yes
Newfoundland	No	Private insurance plans are available.	No
P.E.I.	No	Private insurance plans are available.	No
Nova Scotia	Yes	First day of 13th month. No retroactive coverage. For health services in Nova Scotia only. May not be absent for more than 31 days during the waiting period. Must have full-time student authorization for 12 months or more. Private insurance plans are available for 12 month waiting period.	Yes
New Brunswick	No	Private insurance plans are available	No
Québec	No	Except students who are in receipt of a bursary from the Government of Québec, or students from countries that have an agreement with Québec. Students from France, Portugal, Sweden, Finland, Luxembourg, Denmark, and Norway are eligible with proper documentation. In the case of all students, Québec will not issue a CAQ unless they show adequate coverage.	No

APPENDIX G
SAMPLE OF FORM IMM 1294 B – APPLICATION
FOR A STUDENT AUTHORIZATION

	Citizenship and Immigration Canada Citoyenneté et Immigration Canada	PROTECTED WHEN COMPLETED PROTÉGÉ UNE FOIS REMPLI	• 2
APPLICATION FOR A STUDENT AUTHORIZATION DEMANDE D'AUTORISATION D'ÉTUDE			
File - Référence			
1 APPLICANT(S) REQUÉRANT(S)	PRINCIPAL APPLICANT REQUÉRANT PRINCIPAL	SPOUSE AND CHILDREN ACCOMPANYING PRINCIPAL APPLICANT CONJOINT ET ENFANTS ACCOMPAGNANT LE REQUÉRANT PRINCIPAL	
Family name Nom de famille			
First name Prénom			
Second name Autre prénom			
Relationship Lien de parenté	SELF LUI-MÊME		
Sex Sexe			
Date of birth Date de naissance			
Place of birth Lieu de naissance			
Citizenship Citoyenneté			
Passport no. N° de passeport			
Passport expiry date Date d'expiration du passeport			
Country of issue Pays d'origine			
Marital status État matrimonial			
2 Current mailing address of principal applicant Adresse postale actuelle du requérant principal		3 Permanent address Adresse permanente	
		<input type="checkbox"/> Same as in box 2 or Comme à la case 2 ou	
Telephone number Numéro de téléphone		4 Name and address of present employer or school of principal applicant Nom et adresse de l'employeur actuel ou de l'établissement d'enseignement du requérant principal	
5 Present occupation of principal applicant Profession actuelle du requérant principal		6 Name and address of present employer or school of principal applicant Nom et adresse de l'employeur actuel ou de l'établissement d'enseignement du requérant principal	
7 a) Immigration status of applicant(s) in country where applying Statut par rapport à l'immigration du (des) requérant(s) dans le pays où la demande est présentée		DO NOT WRITE IN THIS SPACE ESPACE RÉSERVÉ	
b) Valid until Valable jusqu'en			
FOR OFFICE USE ONLY - RÉSERVÉ À L'ADMINISTRATION			
Cost recovery code Code de recouvrement des coûts			
Fee Droit		Receipt no. N° du reçu	
Final Decision - Décision finale			
Visa issued Visa délivré		Valid until Valable jusqu'en	
Refused Refusé		Valid until Valable jusqu'en	
Officer - Agent			
Canada			



APPENDIX H

SAMPLE OF FORM IMM 1249 E – APPLICATION TO CHANGE TERMS AND CONDITIONS OR
EXTEND MY STAY IN CANADA



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

PROTECTED WHEN COMPLETED - B

PAGE 1 OF 2

APPLICATION TO CHANGE TERMS AND CONDITIONS OR EXTEND MY STAY IN CANADA

(NOTE: This form can be used to request apply for more than one of the below for yourself or your family members - use space provided in Part B.)

I AM APPLYING FOR: ☐ "A" ☐ Extension of Visitor / Tourist Status ☐ "B" ☐ Student Authorization or Extension ☐ "C" ☐ Employment Authorization or Extension ☐ "D" ☐ Extension of Minister's Permit

NOTE: The required fee accompanying this application does not guarantee its acceptance.

For official use only
Client ID Number

A - PERSONAL INFORMATION

1 Surname (Family name)		Given name(s)	
Other name(s) used			Sex <input type="checkbox"/> Male <input type="checkbox"/> Female
Date of birth D M Y	Place of birth (City, state/province and country)		
Citizenship	Passport number	Expiry date	Country of last permanent residence <input type="checkbox"/> Since birth <input type="checkbox"/> Since 19
MARITAL STATUS <input type="checkbox"/> Never married <input type="checkbox"/> Married		If you are married, is your spouse Canadian citizen or permanent resident? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Widowed <input type="checkbox"/> Separated <input type="checkbox"/> Divorced	
Complete residential address in Canada No. and street Apt./Unit City/Town Province Postal code		Complete mailing address in Canada (if different from residential address) No. and street Apt./Unit City/Town Province Postal code	
Home telephone number Area code		Telephone number in Canada (for messages) Area code	

B - MY FAMILY MEMBERS IN CANADA

2 Surname (Family name)	Given name(s)	Relationship
Date of birth D M Y	Country of birth	Citizenship
Passport number	Expiry date	Type(s) of document requested <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> None
3 Surname (Family name)	Given name(s)	Relationship
Date of birth D M Y	Country of birth	Citizenship
Passport number	Expiry date	Type(s) of document requested <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> None
4 Surname (Family name)	Given name(s)	Relationship
Date of birth D M Y	Country of birth	Citizenship
Passport number	Expiry date	Type(s) of document requested <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> None
5 Surname (Family name)	Given name(s)	Relationship
Date of birth D M Y	Country of birth	Citizenship
Passport number	Expiry date	Type(s) of document requested <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> None
6 Surname (Family name)	Given name(s)	Relationship
Date of birth D M Y	Country of birth	Citizenship
Passport number	Expiry date	Type(s) of document requested <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> None

APPENDIX I
SAMPLE OF FORM IMM 1442 B – FOSS FULL
DOCUMENT ENTRY – GENERIC

GENERIC DOCUMENT PART DISTRIBUTION
DOCUMENT GÉNÉRIQUE - DESTINATAIRES

ENFORCEMENT DOCUMENTS
DOCUMENTS RELATIFS À L'EXECUTION DE LA LOI

- 1 ADJUDICATOR / SIO
ARBITRE / AGENT PRINCIPAL
- 2 EXTRA - SUPPLEMENTAIRE
- 3 QUALITY ASSURANCE, NHO,
ASSURANCE DE LA QUALITE, AC
- 4 OFFICE FILE / PERSON CONCERNED
BUREAU / PERSONNE CONCERNÉES

OTHER DOCUMENTS
AUTRES DOCUMENTS

- 1 QUALITY ASSURANCE, NHO,
ASSURANCE DE LA QUALITE, AC
- 2 HOLDER - TITULAIRE
- 3 OFFICE FILE - BUREAU
- 4 EXTRA - SUPPLEMENTAIRE



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Canada

Gouvernement du
Canada

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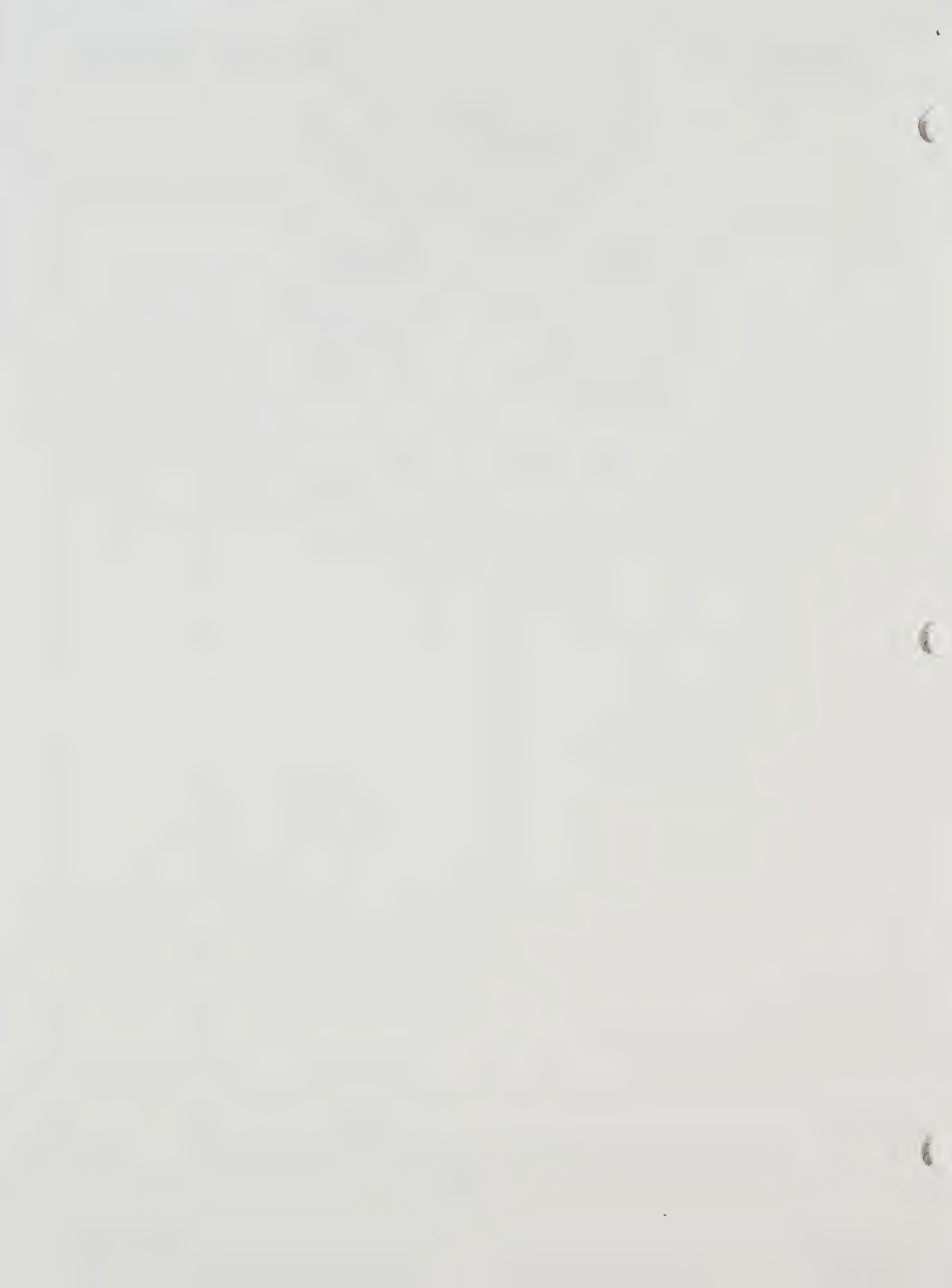
09-97

IMM 1442 B (FOSS) &
GENERIC - DOCUMENT

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF CITIZENSHIP AND IMMIGRATION. FORMULAIRE ÉTABLI PAR LE MINISTRE DE LA CITOYENNETÉ ET DE L'IMMIGRATION
THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA. LE PRÉSENT DOCUMENT EST LA PROPRIÉTÉ DU GOUVERNEMENT DU CANADA

Canada

PART
PARTIE 1



IMMIGRATION

Canada

Chapter PE 6

Examining Visitors





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Examining Visitors

Abbreviations and Short Forms	
Act	<i>Immigration Act</i> , as amended
CIC	Canada Immigration Centre
FOSS	Field Operations Support System
IO	Immigration Officer
POE	Port of Entry
SIO	Senior Immigration Officer

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how an immigration officer at a port of entry examines persons seeking to enter Canada as visitors.

This chapter includes passport and visitor requirements for all categories of visitors. For specific information on visitors who are seeking entry as students or foreign workers, see chapters PE 5, *Examining Students* and PE 7, *Examining Foreign Workers*.

1.2 Policy intent

The Canadian immigration policy aims for examining visitors are:

- to enrich and strengthen the cultural and social fabric of Canada
- to facilitate the entry of visitors for the purpose of fostering trade, commerce, tourism, cultural and scientific activities and international understanding
- to foster the development of a strong and viable economy and the prosperity of all regions of Canada
- to maintain and protect the health, safety and good order of Canadian society, and
- to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity [A3].

2. DETERMINING ADMISSIBILITY

As an immigration officer (IO) at a port of entry (POE), you are responsible for examining visitors to facilitate the entry of bona fide visitors, and to deny entry to persons who are likely to constitute a threat to the safety, security and good order of Canadian society.

Under A2(1) a visitor is a person who seeks to come into Canada for a temporary purpose and who is *not*:

- a Canadian citizen
- a permanent resident of Canada
- a holder of a Minister's permit, or
- an immigrant authorized to come into Canada under A14(2)(b), A23(1)(b) or A32(3)(b).

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, subsection 2(1) and paragraphs 14(2)(b), 23(1)(b) and 32(3)(b).

For information on immigrants who have their landing deferred, see chapter PE 5, *Examining Immigrants*.

2.1 Visa requirements

Under A9(1) every visitor must apply for and obtain a visa before that person appears at a POE. A visa is a document issued or a stamped impression made on a document by a visa officer [A2(1)]. A visa indicates that the prospective visitor has been pre-screened by a visa officer and that the visa officer is satisfied that the visa holder meets the requirements for admission to Canada [A9(4)]. All persons who are approved for visitor entry into Canada will be issued a Canadian Visitor Visa counterfoil (IMM 1346) in accordance with the procedures outlined in chapter IC 3.

Subsection 13(1) of the *Immigration Regulations* provides for the exemption of those persons referred to in Schedule II of the *Immigration Regulations* from making applications for and obtaining visas before appearing at a POE.

2.2 Persons exempted from the visitor visa requirements

For a detailed list of the persons exempted from the requirement to have a visa before appearing at a POE, see APPENDIX A, which reproduces Schedule II of the *Immigration Regulations*. In general, the following items of the schedule exempt:

- a) citizens of the countries listed in item 1 of Schedule II
- b) British citizens and British Overseas Citizens who are re-admissible to the United Kingdom
- c) citizens of British dependent territories
- d) persons holding passports or travel documents issued by the Holy See
- e) citizens and registered aliens of the U.S.
- f) members of a crew seeking entry to join a vessel or for shore leave

- g) persons who are in transit through Canada on a flight that stops in Canada solely for the purpose of refuelling and who
- are in possession of a valid visa to enter the United States on a flight bound for the United States; or
 - have been lawfully admitted to the United States and are on a flight originating in the United States.
- h) military personnel of a country listed in the *Visiting Forces Act* and who are seeking entry to carry out official duties (*military personnel must be in possession of official travel orders*);
- i) persons destined to a consulate of the U.S. (*these persons must have evidence satisfactory to you guaranteeing re-entry into the U.S.*);
- j) persons in possession of valid and subsisting student authorizations or employment authorizations seeking to return to Canada from the U.S. or St. Pierre and Miquelon where the authorizations were issued before the persons departed from Canada;
- k) diplomatic, consular or official representative accredited to Canada holding passports containing a valid diplomatic acceptance, consular acceptance, or official acceptance stamp issued by the Chief of Protocol, Department of Foreign Affairs;
- l) persons admitted to Canada as visitors who visit the U.S. or St. Pierre and Miquelon, and return to Canada within the validity of their status;
- m) Turkish diplomats holding valid and subsisting Turkish diplomatic passports (*Canada has entered into an agreement with no countries other than Turkey*);
- n) Turkish citizens holding official, special or service passports seeking entry to Canada to carry out their official duties;
- o) Citizens of Israel who are in possession of valid and subsisting national Israeli passports are also exempt. An Israeli citizen who holds an orange "Travel Document in lieu of National Passport" is not visa exempt. Effective May 10, 1993, an Israeli citizen travelling on this document requires a visa to visit Canada.

Persons with no visitor visas who have been reported under A19(2)(d) for A9(1) and who are granted entry under A19(3) are exempt by virtue of item 13 of Schedule II if they must seek to return within the period authorized at the time of their initial entry. Since these persons fall within one of the visa-exempt categories of Schedule II, you may grant them entry in the normal manner and for appropriate periods of time. You may grant them six months' entry on their return from a visit to the U.S. or St. Pierre and Miquelon, if appropriate.

The U.S. Embassy considers Puerto Rico to have the same status as any U.S. state, and treats Puerto Ricans in the same manner as all U.S. citizens. A person who has obtained a U.S. visa is free to travel to any part of the U.S., including Puerto Rico. Hence visitors in Canada who wish to visit Puerto Rico are included in the visa exemption provided by s. 13 of Schedule II of the *Immigration Regulations*.

2.3 Students and temporary workers from non-exempt countries

Every visitor who is required to obtain a visa, student authorization or employment authorization before appearing at a POE must be in possession of a valid visa, student authorization or employment authorization when appearing at a POE [*Immigration Regulations*, s. 13(4)].

2.4 Diplomatic and official visas

Students and temporary workers from countries that require a visitor visa must be in possession of both a valid visa and a valid authorization at the time of initial entry, and a valid visa in the case of subsequent entries within the validity of the authorization. One exception exists: persons in possession of valid and subsisting student authorizations or employment authorizations seeking to return as visitors to Canada from the U.S. or St. Pierre and Miquelon are not required to be in possession of a valid visitor visa in cases where the authorizations were issued before the departure of those persons from Canada [*Immigration Regulations*, item 11 of Schedule II].

All diplomats, consular officers and representatives or officials of a foreign country, of the United Nations or of international organizations (except persons holding diplomatic, official, special or service passports from Turkey) coming into Canada on posting, *including their families*, must apply for and obtain an entry visa before presenting themselves at a Canadian POE. For the types of visas issued to these officials, see the IC manual. You should simply stamp their passports, thereby authorizing entry for a period of six months [A26(2); *Immigration Regulations*, s. 24.1]. There is no need to document these persons. During the six-month period, the persons' embassies, consulates and so forth will forward the passports to the Diplomatic Corps Service, Office of Protocol, Department of Foreign Affairs. The Office of Protocol will issue a diplomatic (D), consular (C), official (J) or international (I) acceptance, which indicates that the person is accredited to Canada and entitled to remain in Canada for the duration of status.

For information on U.S. government officials assigned to temporary postings in Canada, see section 2.5 below.

Under item 12 of Schedule II of the *Immigration Regulations*, persons holding passports containing a valid and subsisting diplomatic (D), consular (C) or official (O) acceptance counterfoils issued by the Chief of Protocol are not required to obtain a visa before appearing at a POE [*Immigration Regulations*, s. 13(1)]. Although international (I) acceptance counterfoils have not yet been included in item 12 of Schedule II, persons holding such stamps are not required to obtain a visa before appearing at a POE.

On the first return to Canada of a representative or dependant whose passport bears a foreign representative acceptance counterfoil, the examining officer (normally the officer on the primary inspection line) should stamp the passport and annotate it *For duration of status*.

Dependent children of diplomats, consular officers, representatives or officials who are under 19 years of age and considered to be "members of the family forming part of the household" will be issued acceptances. Children over 19 years of age will be issued acceptances only if they are registered as full-time students. After 25 years of age dependants are no longer eligible to receive official acceptances, and must change their official status to a regular immigration status.

If you have concerns regarding persons accredited to or employed by foreign missions, forward your concerns through Regional management to:

Director
Case Analysis and Co-ordination
Case Management Branch
Inland Services
National Headquarters.

The Director will consult the Office of Protocol, Department of Foreign Affairs. In cases of emergency you may contact the Immigration Advisor at the Office of Protocol (tel. 613-995-5957).

2.5 U.S. government officials

The following official U.S. government personnel assigned to temporary postings in Canada are not issued diplomatic or official acceptances in Canada:

- United States Immigration and Naturalization Service officers;
- U.S. Customs officers;
- International Joint Commission employees;
- U.S. Federal Grain Service inspectors of the U.S. Department of Agriculture; and
- other U.S. government officials in possession of official U.S. government passports and assigned to temporary postings in Canada.

U.S. government employees will be issued employment authorizations under s. 20(5)(b) of the *Immigration Regulations*, and as such are validation exempt (code B-10; see the IH manual). For more information on the documentation of U.S. government employees, see chapter PE 7, *Examining Foreign Workers*.

2.6 Courtesy visas

Visa officers may issue courtesy visas to persons who, although not entitled to diplomatic privileges and immunities, are by reason of their position or reason for coming to Canada considered of sufficient importance to warrant a visa to facilitate their admission. Examples of the appropriate use of courtesy visas include issuance to persons of diplomatic rank coming to Canada for touristic purposes, to members of a trade mission visiting Canada, and to well-known visiting professors coming to Canada to attend conferences. Courtesy visas may be issued in any type of passport to persons who require visas or who are normally visa-exempt. The visa should draw your attention to the fact that the individual is considered by the post abroad to warrant particularly expeditious and courteous treatment at the POE. Such persons are subject to normal documentation, and you should be certain that a person who is normally subject to referral for a secondary examination understands that a courtesy visa does not exempt him or her from such procedures.

2.7 Collective certificates

You should be aware of the Collective Certificate (form IMM 1393; see APPENDIX B), which a visa officer may issue in two instances:

- to groups visiting in the U.S. who wish to make a brief tour of Canada and whose members require visitor visas, and
- to groups flying in transit to destinations other than Canada, when the aircraft is scheduled to refuel in Canada and the passengers require visitor visas.

A visa officer uses his or her discretion in issuing collective certificates. If the officer has concerns about enforcement, he or she will set aside the collective certificate and issue individual visas to members of the group who meet immigration requirements. The groups involved are those whose organizers (such as the tour leader or airline operator) are well known to the visa office, are reputable, and have been properly screened. Group visas are not issued to groups of less than five members.

Persons in a group wishing to travel on a collective certificate must arrive at the POE together, so that you can establish that they are included on the collective certificate. They must remain together until all immigration and customs formalities are completed. To ensure that members of the group understand this requirement, the visa officer will insert in each passport a form letter (see APPENDIX C). Group members are expected to leave Canada together.

To apply for a collective certificate, the group leader must provide the following documentation and information to the appropriate post:

- a) the name of the group and the group's representative;
- b) a list of the group members' names, dates of birth and passport numbers;
- c) the valid passport or travel document of each member of the group;
- d) the full itinerary for the group, including the name of the transportation company, flight numbers (if applicable) and estimated times of arrival and departure;
- e) a declaration by the group's representative stating that no member of the group has ever:
 - been treated for any serious physical or mental disorders or any communicable or chronic diseases;
 - been convicted of any crime in any country, or
 - been refused a visa to travel to Canada or been refused admission to or ordered to leave Canada, and
- f) sufficient funds to pay the fee.

The visa officer will examine the passports, check the Enforcement Information Index and, where applicable, request security clearance in accordance with chapter IC 2.

Names of the group members will be listed alphabetically on the IMM 1393, with the date of birth and passport number appearing beside each name. The last name will be blocked off with either the post stamp or consular seal impression. If more than one certificate is necessary, a post stamp or consular seal impression will be placed across the last name on each sheet.

A visitor visa (IMM 1346; see chapter IC 3) will be placed where indicated on the certificate. The visa will be completed in the normal manner, with the visitor code and total number of persons named on the collective certificate indicated in the upper left corner of the visa. The second leaf of the collective certificate will be attached to the visa copy sheet to form the visa register.

The visa officer will provide the proposed POE with the following information at least 48 hours in advance, and if necessary by facsimile or telex:

- a) the name of the group;

- b) the name of the group leader;
- c) the name of the transportation company;
- d) the number of persons in the group, and
- e) the date and anticipated time of arrival.

A visitor who has been allowed to come into Canada on the basis of a group visa has the same status as a person who was issued an individual visa. Such a person is expected to leave Canada within the authorized period of stay, but you may consider an extension of that period in the normal manner. The applicant will be subject to the normal cost—recovery fee for a visitor visa extension (see chapter IR 5).

2.7.1 Groups from the U.S.

A visa officer may issue collective certificates to organized tour groups visiting in the U.S. who wish to make a brief tour in Canada and whose members require visitor visas. While collective certificates are normally issued to tour groups travelling by bus or automobile, they may also be issued to tour groups travelling from the U.S.A. by aircraft.

If the collective certificate is issued to an organized tour group that is operated by a transportation company, originates in and will return to the U.S., and remains in Canada for less than 48 hours, the applicants are exempt from paying the fee.

2.7.2 Transit visas

A collective certificate may be used as a group transit visa. A visa officer may issue a collective certificate to passengers flying to locations other than Canada, but whose flight transits through Canada. Any person disembarking in Canada, either to visit Canada or to continue his or her transit on a flight other than the one on which the person arrived, may not be included on the collective certificate.

Whenever a collective certificate is used to document groups transiting through Canada, the visa officer will deliver the completed form to representatives of the airline transporting the passengers, with the instruction that the form be in the possession of the purser on the transiting aircraft and be available for examination by Canadian officials on arrival in Canada.

Persons included on a transit collective certificate are fee exempt.

3. DECISION CRITERIA FOR GRANTING ENTRY

3.1 Factors to consider

You should take the following steps in deciding whether to grant entry to a visitor:

- a) consider the intentions of the visitor:
 - what is the client going to do in Canada? Are the person's plans well thought out, or merely frivolous? (Remember that although not all persons visiting Canada will have well-thought-out plans, they should at least know what they are going to be doing for the first couple of days)
 - for how long is the request? Considering the applicant's situation in his or her home country, is the time requested reasonable?
 - is the person's understanding of a temporary purpose in accordance with the definition of a visitor?
 - what family, employment or other responsibilities and obligations has the person left behind, and how have they been discharged?
- b) determine whether the client has the means to support himself or herself, or whether someone else is willing to provide adequate support.
- c) assess the client's ability to leave Canada: does the applicant have the means either to return to the home country or to proceed onward to a third country?
- d) determine whether the person is described under A19.
- e) determine whether the person meets medical requirements. Under s. 21 of the *Immigration Regulations*, visitors who meet the following two conditions are required to undergo a medical examination [*every person listed below who is seeking entry must, when appearing at the POE, be in possession of a valid certificate of medical assessment stating that the person is not a member of a class described in A19(1)(a)*] [*Immigration Regulations*, s. 21(4)]:
 - if they are seeking entry for a total period of more than six consecutive months, including an actual or proposed period of absence from Canada of less than 14 days [*Immigration Regulations*, s. 21(1)(b)(i)], and
 - if they have resided or sojourned, at any time during the one-year period immediately preceding the date of seeking entry, for six consecutive months in an area that in the opinion of the Minister of National Health and Welfare has a higher incidence of serious communicable disease than Canada (see IR 3, table titled *Occupational Basis for Medical Examination, and Medical Requirements and Details by Country* for a list of countries) [*Immigration Regulations*, s. 21(1)(b)(ii)].

Persons just listed above who have undergone an examination under s. 23(1) of the *Immigration Regulations* are not required to undergo a further examination unless they have resided or sojourned since the examination outside of Canada for a period of more than six consecutive months [*Immigration Regulations*, s. 21(3)].

If you encounter a situation where the person is seeking entry for a total period of more than six consecutive months, do not refuse admission because the person does not have a certificate of medical assessment. Instead you should issue medical instructions and counsel the person that he or she will not be granted an extension beyond six months unless he or she completes a medical examination. Issue a Visitor Record (form IMM 1097; see APPENDIX D) and impose the appropriate terms and conditions.

- query the Field Operations Support System (FOSS) in all cases.

3.2 Passport requirements for visitors

Under s. 14(3) of the *Immigration Regulations*, possession of a valid passport, or identity or travel document, is a mandatory requirement for every visitor seeking temporary admission to Canada. The purpose of this requirement is to ensure adequate identification of the visitor, and to guarantee that person's readmission either to the country that issued the passport, or identity or travel document, or to another country.

Normal passport, identity or travel document requirements for visitors do not apply in the case of:

- a visitor who is a citizen of the U.S. Preferably, you should not accept as proof of citizenship any document other than a passport, certificate of birth abroad, certificate of citizenship, certificate of naturalization or a state birth certificate. If the document does not contain a photograph of the person you should request a driver's license or other identification. However, A12(4) states that a person shall produce such documentation as may be required by an IO. Therefore as long as you are satisfied you may accept other identification documents as are acceptable in the circumstances;
- a visitor seeking entry from the U.S. or St. Pierre and Miquelon who has been lawfully admitted to the U.S. for permanent residence;
- a visitor seeking entry from Greenland who is a resident of Greenland;
- a visitor seeking entry from St. Pierre and Miquelon who is a citizen of France and a resident of St. Pierre and Miquelon;
- a member of the armed forces of a state designated for the purposes of the *Visiting Forces Act* who is seeking entry to carry out official duties for a visiting force of that country or for the Canadian forces. This does not apply to a person who has been designated as a civilian component of that visiting force. For a list of countries that have been designated for the purposes of the *Visiting Forces Act*, see IR 1 list titled **Countries Designated for the Purposes of the *Visiting Forces Act***.
- a visitor who is seeking entry as or in order to become a member of the crew of a vehicle and who is in possession of a seaman's identity document issued to him or her under International Labour Organization conventions, or an airline flight-crew licence or crew-member certificate issued to him or her in accordance with International Civil Aviation Organization specifications.

Diplomatic, consular, official and service passports meet the passport requirements for visitors.

3.3 Identity and travel document requirements for visitors

To be acceptable in lieu of a passport, a visitor's identity or travel document must be:

- a) a valid and subsisting travel document issued to that visitor by the country of which he is a citizen or national and recognized by the country of issue as giving that visitor the right to enter the country of issue [*Immigration Regulations*, s. 14(3)(b)]
- b) a valid and subsisting identity or travel document that:
 - was issued to that visitor by a country;
 - is recognized by the country of issue as giving that visitor the right to enter the country of issue, and
 - is of the type issued to non-national residents of the country of issue, refugees or stateless persons who are unable to obtain a passport or other travel documents from their country of citizenship or nationality, or who have no country of citizenship or nationality, [*Immigration Regulations*, s. 14(3)(c)], or
- c) a valid and subsisting identity or travel document issued to that visitor and specified in item 2 of Schedule VII of the *Immigration Regulations* [*Immigration Regulations*, s. 14(3)(d)].

3.4 Acceptable travel documents

It is the duty of visa officials to ensure that travel documents are acceptable for travel to Canada before issuing visas. You can normally assume that a document containing an authentic visa is acceptable for travel to Canada, unless there is a special reason to question its acceptability.

3.5 Visitors with immigrant applications pending

If the person is a visitor with an immigrant application pending, the fact that the immigrant application was made outside Canada is not, in itself, grounds to approve or refuse a visitor entry to Canada. The courts have recognized that a person may have the dual intent of immigrating and of abiding by the immigration law respecting temporary entry. The person's desire to await in Canada the outcome of an immigrant application being processed outside Canada may be legitimate. You should distinguish between such a person and an applicant who has no intention of leaving Canada if the immigration application is refused. You should also keep in mind the time required to process an immigrant application, because the length of time will affect the applicant's means of support, obligations at home, and likelihood of leaving Canada if the application is refused.

You should grant entry as a visitor to a person who is an applicant for landing in Canada and who has received a favourable recommendation for processing. The duration of time you grant may correspond to the anticipated date of landing.

After considering all these factors you must either grant or refuse entry to the person concerned.

4. REFUSALS

4.1 Refusing entry to holders of visitor visas

If you refuse entry to the holder of a visitor visa, you should send full details to the issuing post abroad by telex, in anticipation of future representations being made to the post. You do **not** need to send a copy of your telex report to any desk at NHQ, as pre-February 1995 instructions had indicated. Your telex should go **only** to the Visa Post that issued the C.V.V.

Begin your report with the phrase *As requested — PE6*, and include the following details:

- a) name and nationality of the subject of the A20(1) report
- b) the person's date and place of birth
- c) the visa number, date and office of issue
- d) the date and POE where the person sought to enter Canada
- e) your reason for refusal, *using the code letter* for the reason for refusal:
 - A seeking permanent residence
 - B claims Convention refugee status
 - C intends to seek or take employment
 - D intends to follow a course of study
 - E has insufficient funds to maintain himself or herself and dependants
 - F medical inadmissibility
 - G criminal inadmissibility
 - H expired visitor's visa, and
 - I other
- f) the name and file number of the CIC responsible for follow-up enforcement action, if the CIC differs from the POE, and
- g) the post file number (some posts include the number on the visa).

Do not provide any other detail in your telexed report. This procedure allows you to transmit the report as an unclassified message.

If your reason for refusal was code *I* (other), the CIC must make a further report to the issuing post abroad by mail, giving further details concerning the reason for refusal. In the case of a statesmen or special category visitor, mail the report under secret cover.

This reporting system gives posts abroad immediate feedback on their decisions for issuing visitor visas, and assists in monitoring the effectiveness of the visitor visa program.

For citizens of "Special Category" countries, you may also need to send another telex report. Refer to IC 1.54 for full instructions.

4.2 Refusing entry to persons who are not in possession of valid visitor visas

If you determine that the person is inadmissible to Canada or should not otherwise be allowed to come into Canada, you must refuse that person admission. For further information on refusals, see chapter PE 9, *A20 Reports and Voluntary Withdrawal*.

4.3 Right of appeal

Under A70(2)(b) a visitor who seeks entry into Canada and who was in possession of a valid visa when reported as inadmissible under A20(1) has the right to appeal a removal order made against him or her. When you

grant the person entry, however, the visa is spent, and if the visa-holder subsequently contravenes the Act or its regulations, he or she does not have a right of appeal on the basis of having previously been issued a visa.

5. GRANTING ENTRY

5.1 Duration of visits

5.1.1. Six months' entry

When you grant entry to a person, you can approve the entire time requested or a reduced period.

You should routinely grant entry for a period of six months to a person requesting entry as a visitor, even in a case where the person requests entry for a very brief period [A26(2); *Immigration Regulations*, s. 24.1]. Six months will be more than adequate for most purposes of travel, and precludes the need for the person to request an extension. When you grant six months' entry, stamp the person's passport or other travel document, inscribe a date of expiry based on a calculation of six months from the date of entry, and initial your notation. For the procedures for stamping a passport, see chapter IC 3.

When granting entry, you should ensure that the expiry date does not fall on a weekend or statutory holiday. The Federal Court has ruled that a person whose visitor status expires on a Saturday or Sunday, but who does not report to an immigration office until the following Monday, is reportable under A27(2)(e) [*Kantilal Parmar v. Minister of Manpower and Immigration*, FCTD, Doc. No. T-1004-81, March 3, 1981]. This also applies to cases of status expiring on a statutory holiday.

The lack of a return ticket valid for the visitor's stated length of stay is not in itself sufficient reason for you not to grant six months' entry. Most passengers can either extend the validity of their tickets or have access to funds with which they can update the validity of their fares.

The policy of six months' entry does not apply to a dependant of the holder of a valid student or employment authorization. You should grant entry to the dependant for a period of time equal to the time granted to the holder of the student or employment authorization.

5.1.2. Less than six months' entry

If you determine that the client does not have the means to accomplish his or her objective, or if you consider the time requested to be excessive, you have the authority to grant entry for a period of time less than that requested by the applicant.

Some types of cases will clearly require a grant of entry of less than six months. These include:

- a person in possession of a visitor visa that indicates the length of stay was intended to be for less than six months (this is especially relevant to visitors from special category countries)
- a person whose passport or other travel document will cease to be valid in less than six months, and
- a visitor in transit through Canada. You should ensure that the amount of time you grant to the person in transit is adequate to cover the return trip, if it is required.

If you believe that a length of stay should be limited to a period of less than six months, you have in essence decided that there is a need to exercise an element of control over the visitor's length of stay, and that a

5.1.3. When to document a visitor

visitor record (IMM 1097) must be issued. When appropriate, you should record in the *Remarks* section why you did not grant six months' entry. The only exception to this circumstance is a person in possession of a valid visitor's visa that indicates a stay of less than six months, in which case you could stamp and annotate the passport accordingly.

You must document a visitor (other than a visitor in possession of either an employment or a student authorization) on a visitor record if:

- a) the visitor intends to remain in Canada longer than six months. One form is normally sufficient for a family travelling together. A family is the father and mother and any dependent children and, for the purpose of any provision of the Act and its regulations, includes such other classes of persons as are prescribed for the purpose of that provision.
- b) in your opinion a visitor should be documented for control purposes regardless of the length of stay. This could include:
 - a seaman who is signing off or entering to join a crew
 - a visitor entering for medical treatment
 - a person extradited to Canada who is being allowed forward as a visitor, and
 - any visitor on whom terms or conditions prescribed in the *Immigration Regulations* have been imposed. This may also include special category visitors. For further information, see chapter IC 2.20 8)a).
- c) a personal servant comes forward with, or is destined to, his or her usual foreign employer while the employer is visiting Canada. You should consider the person to be a tourist, and document him or her on a visitor record. Paragraph 19(1)(q) of the *Immigration Regulations* limits the period of time for these persons to less than 90 days.

5.2 Imposing terms and conditions

You may impose prescribed terms and conditions on a visitor at the time you admit him or her to Canada [A14(3)]. A senior immigration officer (SIO) may also impose terms and conditions under A23(2), as can an adjudicator under A32(4). Section 23 of the *Immigration Regulations* describes the terms and conditions that you may impose.

When you impose terms and conditions of admission, it is not necessary to state on the visitor record the terms and conditions precisely as they are worded in the *Immigration Regulations*. You should attempt to reflect the substance and spirit of the terms and conditions in the *Immigration Regulations*, and whenever possible you should use the wording of s. 23(3) of the *Immigration Regulations*. When you complete a visitor record on FOSS (IMM 1442), you may choose the appropriate terms and conditions from the list that appears automatically on the screen.

You should not impose terms and conditions in lieu of a decision by you or an adjudicator, nor should you use them as a means of discouraging a visitor from coming into Canada. The reasons for imposing terms and conditions on a visitor are to ensure that the person adheres to the period and purpose for which he or she sought entry, and to make the visitor aware of the need for formal authorization before extending that period or varying the purposes of the visit.

You may impose three basic controls on the ordinary visitor to Canada:

a) **the length of time the person can remain:**

a condition establishing the period of time within which a visitor must leave Canada [*Immigration Regulations*, s. 23(3)(h)]. For most visitors requesting entry for brief periods, the general provisions of A26(2), where a visitor may remain in Canada for a six-month period [*Immigration Regulations*, s. 24.1], are sufficient control in themselves, and result in documenting on an IMM 1097 only those visitors who seek entry for longer than six months, or those you believe might not leave Canada within the time requested.

b) **a prohibition against studying:**

a condition prohibiting a visitor from enrolling in an educational institution [*Immigration Regulations*, s. 23(3)(b)]. You might impose this condition if you are somewhat apprehensive that a visitor is seeking entry with the thought of becoming a student.

c) **a prohibition against working:**

a condition prohibiting a visitor from taking employment while in Canada [*Immigration Regulations*, s. 23(3)(a)]. You might impose this condition if you suspect that a visitor is seeking entry with the thought of working once admitted to Canada, but you have no evidence to support your suspicion.

Most of the other terms and conditions that you may impose on visitors have more particular application, such as those imposed on workers and students:

- for a visitor seeking entry to join a crew of a vehicle already in Canada, you should impose a condition that would require him or her to join the vehicle within a specified period of time [*Immigration Regulations*, s. 23(3)(j)]. This is a control measure, and the time you allot should be a reasonable period within which the person can join the vehicle.
- you might impose a condition to limit the area within which a visitor may travel in Canada [*Immigration Regulations*, s. 23(3)(i)]. This condition will impose a restriction on the person's movements. For example, you might want to use the condition to limit the travel of a person in transit through Canada to another country (perhaps limiting the person to the airport and surrounding area), or the travel of a person coming to Canada to stand trial or to be a witness in legal proceedings.
- you should impose a condition on a visitor who otherwise complies with the Act and its regulations, but who has a dormant health condition that could be a danger to public health if it became active. The condition should name the time and place where the visitor must report for medical observation and treatment while in Canada [*Immigration Regulations*, s. 23(3)(k)].
- if you impose conditions on a visitor concerning attendance at a school, employment, or medical observations, you should also impose a condition requiring the person to furnish evidence of compliance with the terms and conditions imposed, as a control measure [*Immigration Regulations*, s. 23(3)(l)].

An authorization holder may apply to change terms and conditions, to extend an authorization, to obtain a different authorization, or to extend his or her visitor status [A16(a), A16(b)]. If such a person appears at a POE you have the discretion to grant or refuse such an application.

5.3 Recommending security deposits

Only IOs who are designated as SIOs [Instrument I-17] are authorized to take cash deposits and bonds. The Act clearly intends bonds to be used as a control measure in a case where you believe that a visitor or group of visitors may not comply with any terms or conditions that you may impose. These doubts concerning complying with terms and conditions can often be alleviated by a cash deposit or a performance bond that specifies an amount adequate to guarantee compliance.

When a person is otherwise admissible to Canada, you should consider the possibility that the individual may comply with the Act if a sum of money or other security were taken under the conditions set out in A18(1). If you believe that the person may comply if security were posted, you may make a recommendation for a cash deposit, a performance bond or a combination of the two to an SIO, who makes the delegated decision.

For example, the following situations may warrant your recommending to an SIO that a bond be issued:

- if a person indicates his or her intention to enter as a visitor, and you have some concern that the person actually intends to remain permanently. The decision to report the individual under A19(1)(h) would depend on the degree of doubt in your mind. If you believe that the person would not abide by terms limiting the stay, you could consider recommending an A18 security bond. *Simply because a person is not entirely sure how long he or she wishes to remain in Canada does not necessarily signify that the person is not a genuine visitor within the meaning of A19(1)(h).* Similarly, an indication that a person might want to extend his or her stay for as long as permitted will not bring the person within A19(1)(h), unless you have evidence that he or she intends to remain permanently. Usually the person will be prepared to comply with the requirements of the law, if you make them clear (emphasized, if necessary, by an SIO's taking a deposit or bond).
- if a person presents himself or herself at a POE as a tourist, and you believe that the person's true intention is to work or study in Canada. You could impose appropriate conditions set out in s. 23 of the *Immigration Regulations*, and recommend a security deposit or performance bond to guarantee compliance with the terms and conditions.
- at the examination, when you inform a person who was originally seeking entry to work or study that such conduct is not allowed, and the person agrees to come in as a tourist.

An IO cannot use security deposits and performance bonds to cure an obvious inadmissibility to Canada. If you determine that an inadmissibility exists, you must write an A20(1) report in the usual manner.

The following situations may not be appropriate for you to recommend issuing a bond or taking a cash deposit:

- situations involving a statutory inadmissibility such as A19(1)(a)(i), A19(1)(c), A19(1)(c.1), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k), A19(1)(l) or A19(2)(a); the grounds cited in these paragraphs are serious enough not to warrant entry on an A18(1) bond
- the person posting the performance bond does not have the ability to pay the performance bond should the traveller default, or

- there is no evidence to suggest that the person would comply with terms and conditions if you recommend that an A18(1) bond be issued.

For more information on performance bonds and cash deposits, see chapter PE 10, *Senior Immigration Officer Functions at Ports of Entry*.

5.4 Issuing visitor records

Prepare the visitor record by entering the data into FOSS, using the *Status Entry* screen. Generate the document (IMM 1442) on the *full-document entry* printer. If you need help coding, use the FOSS help screens. If the FOSS system is not operational, complete the visitor record (IMM 1097) manually, and enter the information in FOSS as soon as the system is available. For detailed information on completing and coding the IMM 1097 manually, see the ID and IH manuals.

5.5 Cost—recovery fees

There are no cost—recovery fees for documenting visitors, unless discretionary entry is granted under A19(3) (see APPENDIX B of chapter PE 9, and chapters PE 10 and IR 5, section 22.).

5.6 Counselling

When you counsel a visitor, you should cover the following points:

- the expiry date of the visit;
- any terms and conditions that you have applied;
- procedures for applying for an extension;
- cost—recovery requirements should the person seek an extension inland;
- answer any questions the person may have concerning his or her status, and
- information about cancellation and refund if the person has been placed on an A18(1) bond (see chapter PE 10).

APPENDIX A
VISITORS EXEMPT FROM VISA REQUIREMENTS BEFORE
APPEARING AT A POE

SCHEDULE II(s. 13)

1. Citizens of Andorra, Antigua and Barbuda, Australia, Austria, Bahamas, Barbados, Belgium, Botswana, Brunei, Costa Rica, Cyprus, Czech Republic, Denmark, Dominica, Finland, France, Federal Republic of Germany, Greece, Grenada, Hungary, Iceland, Ireland, Italy, Japan, Kiribati, Liechtenstein, Luxembourg, Malaysia, Malta, Mexico, Monaco, Namibia, Nauru, Netherlands, New Zealand, Norway, Papua New Guinea, Republic of Korea, St. Kitts and Nevis, St. Lucia, St. Vincent, San Marino, Saudi Arabia, Singapore, Slovenia, Solomon Islands, Spain, Swaziland, Sweden, Switzerland, Tuvalu, Vanuatu, Western Samoa and Zimbabwe.

[SOR/96-146, 96-290]

2. British Citizens and British Overseas Citizens who are re-admissible to the United Kingdom.

3. Citizens of British dependent territories who derive their citizenship through birth, descent, registration or naturalization in one of the British dependent territories of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Montserrat, Pitcairn, St. Helena or the Turks and Caicos Islands.

4. Persons holding passports or travel documents issued by the Holy See.

5. Nationals of the United States and persons lawfully admitted to the United States for permanent residence.

6. Persons who seek entry to become members of a crew of a vehicle that is in Canada and members of a crew who seek entry, other than citizens of a foreign country with which the Government of Canada has entered into an agreement whereby such persons or members of a crew are required to obtain visas.

[SOR/93-44]

6.1. Persons in transit through Canada to become members of a crew or to be repatriated after working as members of a crew, where those persons are in possession of an onward ticket for departure from Canada within 24 hours after their arrival in Canada. [SOR/94-242]

7. Persons who are in transit through Canada on a flight that stops in Canada solely for the purpose of refuelling and who

(a) are in possession of a valid visa to enter the United States on a flight bound for the United States; or

(b) have been lawfully admitted to the United States and are on a flight originating in the United States.

[SOR/94-318]

8. Members of the armed forces of a country that is a designated state for the purposes of the *Visiting Forces Act* who are seeking entry in order to carry out their official duties, other than persons who have been designated as civilian components of that force.

9. Persons coming to Canada from the United States for an interview with a United States consular officer concerning a United States immigrant visa where they are in possession of evidence satisfactory to an immigration officer that they will be granted re-entry to the United States.

10. [Revoked, SOR/83-902, s. 6]

11. Persons in possession of valid and subsisting student authorizations or employment authorizations seeking to return as visitors to Canada from the United States or St. Pierre and Miquelon where the authorizations were issued prior to the departure of those persons from Canada.

12. Persons holding passports containing a valid and subsisting "Diplomatic Acceptance", "Consular Acceptance" or "Official Acceptance" stamp issued by the Chief of Protocol for the Department of External Affairs on behalf of the Government of Canada.

13. Persons visiting Canada who, during that visit, also visit the United States or St. Pierre and Miquelon and return to Canada therefrom as visitors within the period authorized on their initial entry or any extension thereto.

14. Persons holding valid and subsisting diplomatic passports issued to them by a country with which Canada has entered into an agreement whereby each country is to exempt holders of such passports from the requirement to obtain visas.
15. Persons holding valid and subsisting official, special or service passports issued to them by a country with which Canada has entered into an agreement whereby each country is to exempt from the requirement to obtain visas those holders of such passports who are seeking entry in order to carry out their official duties.
16. Citizens of Israel who are in possession of valid and subsisting national Israeli passports. [SOR/93-224]

APPENDIX B
SAMPLE OF IMM 1393 (07-92) B - COLLECTIVE CERTIFICATE

Employment and Immigration Canada **Emploi et Immigration Canada**

COLLECTIVE CERTIFICATE (SEE INSTRUCTIONS ON REVERSE) **CERTIFICAT DE GROUPE** (VOIR LES INSTRUCTIONS AU VERSO)

PROTECTED WHEN COMPLETED - A
PROTEGER UNE FOIS REMPLI

NAME AND ADDRESS OF TOUR AGENCY - NOM ET ADRESSE DE L'AGENCE DE VOYAGE		NAME OF TOUR AGENT - NOM DE L'AGENT DE VOYAGE		TELEPHONE	
NAME AND ADDRESS OF TOUR LEADER - NOM ET ADRESSE DU CHEF DU GROUPE		SEX M. <input type="checkbox"/> F. <input type="checkbox"/>	DATE OF BIRTH DATE DE NAISSANCE	CITIZEN OF CITOYEN DE	PASSPORT NO. N° DU PASSPORT
INTENDED MODE OF TRAVEL MOYEN DE TRANSPORT PRÉVU BY AIR <input type="checkbox"/> BY SEA <input type="checkbox"/> BY RAIL <input type="checkbox"/> BY BUS <input type="checkbox"/> BY OTHER <input type="checkbox"/>		INTENDED DATE AND PORT OF ARRIVAL IN CANADA DATE ET PORT D'ARRIVÉE PRÉVUS AU CANADA D-J M Y-A PORT - PORT		INTENDED DATE AND PORT OF DEPARTURE FROM CANADA DATE ET PORT DE DÉPART PRÉVUS DU CANADA D-J M Y-A PORT - PORT	

LIST GROUP MEMBERS ALPHABETICALLY (NO FEWER THAN FIVE) - ÉNUMÉREZ LES MEMBRES DU GROUPE DANS L'ORDRE ALPHABÉTIQUE (GROUPE COMPOSÉ D'AU MOINS CINQ PERSONNES)

LIST NO. N°	SURNAME NOM DE FAMILLE	GIVEN NAMES PRÉNOMS	SEX - SEXE M - F	DATE OF BIRTH DATE DE NAISSANCE	CITIZEN OF CITOYEN DE	PASSPORT NO. N° DU PASSPORT
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OFFICIAL USE ONLY (DO NOT COMPLETE) - RÉSERVE (NE PAS REMPLIR)

THIS DOCUMENT, WHEN VISED, IS VALID FOR A SINGLE JOURNEY TO CANADA.
LE PRÉSENT DOCUMENT, QUANT VISÉ, EST VALIDE POUR UN SEUL VOYAGE AU CANADA.

TO BE COMPLETED BY EXAMINING OFFICER AT CANADIAN PORT OF ENTRY.
DOIT ÊTRE REMPLI PAR L'EXAMINATEUR AU POINT D'ENTRÉE AU CANADA.

THE FOLLOWING DO NOT APPEAR FOR EXAMINATION (CIRCLES CORRESPONDING LIST NO.)
LES PERSONNES SUIVANTES NE SE SONT PAS PRÉSENTÉES LORS DE LA VISITATION ENTOURÉES D'UN CERCLE LES NUMÉROS CORRESPONDANTS DE LA LISTE

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		11	12	13	14	15	16	17	18	19	20

BORD ON IMM 514 - DÉPÔT DE GAGE IMM 514

☐ NO OR - OU SERIAL NO. - N° DE SÉRIE

TO BE COMPLETED AT CANADIAN PORT OF DEPARTURE.
DOIT ÊTRE REMPLI AU PORT DE DÉPART AU CANADA.

THIS FORM WAS SURRENDERED ON LE PRÉSENT FORMULAIRE A ÉTÉ REMIS LE

THE FOLLOWING PERSONS DID NOT LEAVE CANADA WITH THE GROUP (CIRCLES CORRESPONDING LIST NO.)
LES PERSONNES SUIVANTES N'ONT PAS QUITTÉ LE CANADA AVEC LE GROUPE ENTOURÉES D'UN CERCLE LES NUMÉROS CORRESPONDANTS DE LA LISTE

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CODE DE RECOURS

AMOUNT
MONTANT

SET
TYP

RECEIPT NO.
N° DE RECUS

AUTHORIZED OFFICER'S SIGNATURE
SIGNATURE DE L'AGENT AUTORISÉ

DATE

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
CE FORMULAIRE A ÉTÉ ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

IMM 1393 (07-92) B

Canada

APPENDIX C

SAMPLE LETTER OF ADVICE TO MEMBERS OF TOUR GROUPS VISITING CANADA

A visa officer will insert a letter in each passport of members of groups visiting Canada on a collective certificate (IMM 1393). The precise wording may vary with local offices, but it will follow the intent of this sample:

As a member of an organized tour group you have been included in a group visa which will facilitate your entry into Canada for a specific period.

Since you would not be admissible to Canada without a visa, and the group visa that has been issued will be held by your tour leader, it is essential that you remain with your group on arrival until all immigration and customs formalities have been completed. Even though an immigration stamp will be placed in your passport, we suggest that you retain this letter with your passport during your trip.

We hope that your visit to Canada will be a pleasant one.

APPENDIX D
SAMPLE OF IMM 1097 VP-P (12-88) B - VISITOR RECORD

Embauchement au Immigration Canada Emploi et Immigration Canada		VISITOR RECORD FICHE DU VISITEUR		CLIENT ID - ID DU CLIENT						
HEADQUARTERS - USE ONLY - RESERVE A L'ADMINISTRATION CENTRALE										
SECTION A				TYPE OF CASE / GENRE DE CAS						
SURNAME / NOM DE FAMILLE / PRENOMS				NAME / NOM						
BIRTH DATE / DATE DE NAISSANCE		COUNTRY OF BIRTH / PAYS DE NAISSANCE		COUNTRY OF CITIZENSHIP / CITOYEN DE						
SEX / SEXE		MARITAL STATUS / ETAT MATRIMONIAL		TOTAL PERSONS / NOMBRE TOTAL DE PERS						
1-M/H 2-F/F		<input type="checkbox"/> 1 SINGLE / CELIBATAIRE <input type="checkbox"/> 3 WIDOWED / VEUF / VEUVE <input type="checkbox"/> 2 MARRIED / MARIE(E) <input type="checkbox"/> 4 DIVORCED / DIVORCE(E) <input type="checkbox"/> 5 SEPARATED / SEPAR(E)		FAMILY STATUS INDICATOR / INDICATEUR DE LA SITUATION PAR RAPPORT A LA FAMILLE						
COMPLETE ADDRESS OUTSIDE CANADA / ADRESSE AU LONG A L'EXTERIEUR DU CANADA				1- PRINCIPAL APPLICANT / REQUERANT PRINCIPAL 2- SPOUSE / CONJOINT 3- DEPENDANT / PERSONNE A CHARGE						
NAME AND COMPLETE ADDRESS WHERE YOU CAN BE REACHED IN CANADA / NOM ET ADRESSE AU LONG DU L'ON PEUT VOUS REJOINDRE AU CANADA										
SECTION B RECORD OF ENTRY - FICHE D'AUTORISATION DE SEJOUR										
TERMS AND CONDITIONS / CONDITIONS		ACCOMPANYING FAMILY MEMBERS / MEMBERS DE LA FAMILLE QUE VOUS ACCOMPAGNEZ								
		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width: 40%;">NAME / NOM</th> <th style="width: 20%;">DATE OF BIRTH / DATE DE NAISSANCE</th> <th style="width: 40%;">RELATIONSHIP / LIEN DE PARENTE</th> </tr> <tr> <td colspan="3" style="height: 100px;"></td> </tr> </table>			NAME / NOM	DATE OF BIRTH / DATE DE NAISSANCE	RELATIONSHIP / LIEN DE PARENTE			
		NAME / NOM	DATE OF BIRTH / DATE DE NAISSANCE	RELATIONSHIP / LIEN DE PARENTE						
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		NAME / NOM	DATE OF BIRTH / DATE DE NAISSANCE	RELATIONSHIP / LIEN DE PARENTE						
VALID UNTIL / DATE D'EXPIRATION		BONDED / CAUTIONNEMENT?		STATUS / ETAT						
1 YES OUI 2 NO NON		1 YES OUI 2 NO NON		1 CERTIFY THAT THE PARTICULARS OF MY IDENTITY ARE CORRECT AND ACCEPT THE TERMS AND CONDITIONS SET OUT HEREIN. 2 JE CERTIFIE QUE LES RENSEIGNEMENTS SUR MON IDENTITE SONT EXACTS, ET J'ACCÉPTE LES CONDITIONS PRECISEES.						
DATE SIGNED / SIGNE		CANADA IMMIGRATION CENTRE / CENTRE D'IMMIGRATION CANADA		SIGNATURE OF VISITOR / SIGNATURE DU VISITEUR						
130		130		SIGNATURE OF IMMIGRATION OFFICER / SIGNATURE DE L'AGENT D'IMMIGRATION						
REMARKS / OBSERVATIONS		<div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto; text-align: center; padding: 5px;"> APPEND PHOTOGRAPH APPONDER LA PHOTO </div>								
MEDICAL COMPLETED / FORMALITES MEDICALES ACCOMPLIES		SPECIAL PROGRAM / PROGRAMME SPECIAL								
1 YES OUI 2 NO NON		130								
DATE OF ORIGINAL ENTRY / DATE D'ENTREE INITIALE		EXTENSION NUMBER / CODE DE PROLONGATION		ORIGINAL SERIAL NUMBER / N° DE SERIE INITIAL						
130		130		130						
OFFICE FILE NO. / N° DE REFERENCE DU BUREAU		ERROR - ERREUR		COST RECOVERY / RECOURS DES FRAIS						
130		130		130						
RECEIPT NO. - N° REC		UTILITIES / SERVICES		130						
130		130		130						

APPENDIX E
COUNTRIES DESIGNATED FOR THE PURPOSE OF
THE VISITING FORCES ACT

Antigua and Barbuda	Malawi
Australia	Malaysia
Bangladesh, People's Republic of	Nepal, Kingdom of
Barbados	Netherlands
Belgium	New Zealand
Belize	Niger
Botswana, Republic of	Nigeria
Brunei	Norway
Cameroon	Oman, Sultanate of
Denmark	Portugal
Ethiopia	Sierra Leone, Republic of
France	Singapore
Germany, Federal Republic	Sudan, Democratic Republic of
Ghana	Swaziland
Greece	Tanzania
Guyana	Thailand
Iceland	Trinidad and Tobago
Italy	Turkey
Ivory Coast, Republic of	Uganda
Jamaica	United Arab Emirates
Japan	United Kingdom of Great Britain and Northern Ireland
Kenya	United States
Korea, South	Venezuela
Kuwait, State of	Zambia
Luxembourg	Zimbabwe, Republic of

TEMPORARY FOREIGN WORKER GUIDELINES**FW****ENGLISH**

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TRANSMITTAL NO. 99-01

INSERT**CHAPTER FW 1 THROUGH 11**
in its entirety.

(également disponible en français)

Please note:

This new FW manual is replacing :		
Chapter IS 15	(noted in manual)	
Chapter IP 7	(noted in manual)	
Chapter IP 16	(noted in manual)	
Chapter OP 11		
Chapter OP 12		
Chapter PE 7		
Chapter PE 16		

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Integrated Information Management Services
Information Management Directorate
Information Management and Technologies Branch
NHQ

JULY 1999

Citizenship and Immigration

Canada

Chapter PE 8

War Crimes and Crimes
Against Humanity



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1 BACKGROUND TO CANADA'S WAR CRIMES PROGRAM

In 1986 the Deschênes Commission concluded that there were war criminals living in Canada and suggested ways of dealing with them. In response to the report, the government announced that Canada would not become a safe haven for war criminals and created dedicated war crimes units within the Department of Justice, the RCMP, and Citizenship and Immigration. Although the primary focus at that time was WW II cases, it was acknowledged that Modern Day War Criminals were making their way to Canada and a series of changes were made to the *Immigration Act* and Regulations beginning in 1987.

Note: Refer to APPENDIX A for a chronological listing of these amendments to the *Immigration Act* and Regulations from 1987 to 2000.

In 1998 the government introduced changes to its War Crimes Program along with additional resources to strengthen its efforts to deny safe haven to war criminals. The major thrust of these changes was to improve coordination between the three departments delivering Canada's War Crimes Program. An interdepartmental committee was created to ensure that the appropriate remedy was taken in the case of all alleged war criminals in Canada. At the same time an expanded Modern War Crimes Unit was created within the Case Management Branch at NHQ to provide analytical and research capacity as well as legal and intelligence expertise. Regional War Crimes Units were created in the regions, and at CPC Vegreville, and additional resources were allocated to selected missions abroad.

In addition to these national initiatives Canada was and remains very active in international fora, strongly supporting the creation of the International Criminal Tribunals for the former Yugoslavia and Rwanda. In addition, Canada was one of the first states to ratify the Rome Statute and the creation of the International Criminal Court (ICC) by implementing a new Canadian statute, the *Crimes Against Humanity and War Crimes Act*, which was proclaimed on October 23, 2000.

For further background information, copies of the Annual Reports on Canada's War Crimes Program are available on the CIC and Department of Justice web sites and the CIC Intranet.

2 POLICY INTENT AND APPLICATION

The policy of the government is clear. Individuals who have committed, or who are complicit in the commission of a war crime, a crime against humanity, genocide, or any other reprehensible act, regardless of when or where these crimes occurred, are not welcome in Canada.

CIC takes a four-pronged approach in dealing with modern-day war criminals:

- refusing their overseas visa applications as immigrants, refugees, or visitors;
- denying their entry to Canada at ports of entry;
- excluding them from the refugee determination process in Canada; and
- removing them from Canada.

3 BCW ORGANIZATION AND MANDATE

The Modern War Crimes section (BCW) is located within the Case Management Branch. Its mandate is to organize and direct program activities and to be accountable for the CIC portion of Canada's War Crimes Program. A major responsibility of BCW is to ensure that field officers in Canada and abroad have the tools, support and expertise to effectively apply the provisions of the *Immigration Act* pertaining to modern-day war criminals.

The Modern War Crimes Section is involved in the following major activities:

Case management

- provides information and advice to the Minister on contentious and high profile cases;
- provides instructions to the Department of Justice in cases before the courts;
- provides guidance to the field on high profile cases.

Field support

- develops and delivers training;
- provides policy and legal interpretation;
- develops working tools such as guidelines and procedures, country profiles, screening aids and specific questionnaires.

Research

- conducts research and obtains open source information in response to field queries;
- serves as a central repository of information gathered from media sources and international organizations which concentrate on human rights violations that have occurred in current and recent history including legal, military, refugee, historical, and geographic information;
- maintains gateways to several media monitoring databases;
- maintains an extensive database which is continually being expanded;
- conducts research into the human rights records of regimes and provides advice to the Minister regarding designation under A19(1)(l).

Intelligence coordination (BCI)

- acts as a clearing house for all information collected by several government departments;
- gathers classified information concerning governments, countries, specific events, and perpetrators of war crimes;
- provides information to international tribunals and like-minded governments.

Interdepartmental coordination

- Director and senior staff of the Modern War Crimes Unit participate in the Interdepartmental Operations Committee which reviews all cases of war criminals to ensure that the most effective remedy is taken;
- Committee ensures that there is effective coordination between the three departments delivering Canada's War Crimes Program.

4 ROLES AND RESPONSIBILITIES

In order to ensure the effective application of the war crimes provisions in the Immigration Act, effective communication and coordination is required between field offices, regions, and NHQ. The general roles and responsibilities with respect to case processing are as follows:

POEs and CICs

- Identify war criminals or persons suspected of war crimes. This is accomplished through checking the various data bases and lookout systems; by screening applications and by effective interviewing techniques using the profiles, screening aids, and questionnaires provided by the War Crimes Unit;
- Refer such cases to the regional War Crimes Unit as soon as possible in the immigration process;
- Determine admissibility in consultation with the War Crimes Unit as required.

Regional War Crimes Units

- Conduct investigations into cases referred to them by CICs, POEs, NGOs and members of the public;
- Consult with BCW as required for research and intelligence information;
- Decide eligibility and assist POEs in decisions on admissibility;
- Prepare submissions for the Minister's opinion on public interest pursuant to A46.01(1) and on the national interest pursuant to A19(1)(l);
- Prepare cases for 1F(a) exclusion and intervene at the CRDD on behalf of the Minister.

Note: For a listing of regional war crimes units refer to APPENDIX I.

National Headquarters (BCW)

- Advise Minister on high profile and sensitive cases;
- Conduct research and obtain intelligence information in response to queries from regional war crimes units and missions abroad;
- Provide assistance and guidance to regional war crimes units and missions abroad on high profile and sensitive cases.

5 DESCRIPTION OF WAR CRIMES, GENOCIDE, AND CRIMES AGAINST HUMANITY

The following descriptions apply:

Crimes against Humanity

Murder, extermination, enslavement, imprisonment, torture, sexual violence, or any other inhumane act or omission that is committed against any civilian population or any identifiable group whether or not the state is at war, and regardless of whether the act or omission is a violation of the territorial law in force at the time. The acts or omissions may have been committed by state officials or private individuals, and against their own nationals or nationals of other states.

Genocide

An act or omission committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, whether committed in times of peace or war, by state officials or private individuals.

War Crimes

Acts or omissions committed during an armed conflict (war between states and civil war) which violate the rules of law as defined by international law. These acts or omissions include the ill-treatment of civilians within occupied territories, the violation and exploitation of individuals and private property, and the torture and execution of prisoners.

Legal definitions of the above will be found in section 4 of the *Crimes against Humanity and War Crimes Act*.

Note: Refer to APPENDIX B for these definitions.

For a copy of the complete statute refer to the Department of Justice web site at: <http://www.canada.justice.gc.ca>.

The definitions of these international crimes evolved over time subsequent to various international conventions. Hence there is some overlap between the terms as follows:

Differences between genocide and crimes against humanity

Genocide is considered a particularly reprehensible form of a crime against humanity and as a result every act of genocide is also a crime against humanity; however the converse is not true. The difference between genocide and crimes against humanity is:

- genocide means an act committed with intent to destroy the group, while a crime against humanity means an act committed as part of an widespread or systematic attack, the perpetrator being aware of the widespread or systematic attack;
- the behaviour targeted for genocide is more reprehensible, namely the "destruction in whole or in part of a group", while for crimes against humanity it is "widespread or systematic attack";
- the circle of victims for genocide is smaller, namely a 'national, ethnic, racial, or religious group' compared to "any civilian population" for crimes against humanity.

Differences between war crimes and crimes against humanity

- isolated reprehensible acts do not amount to crimes against humanity, while even one atrocity can result in the commission of a war crime; this does not mean that a single act can never be a crime against humanity but it has to be shown that this one act was the result of the implementation of widespread or systematic policy;
- war crimes, even committed in a civil war, can only occur when a certain threshold of intensity occurs between the two parties in this conflict; police officers

conducting themselves in a violent manner during riots does not constitute war crimes but could be crimes against humanity;

- crimes against humanity can occur in any setting i.e. international war, civil war, and times of peace; this would mean that a particular atrocity, e.g. the killing of a civilian during a civil war, could be both a war crime and a crime against humanity;
- while some types of atrocities can be both war crimes and crimes against humanity, other acts will fall under one category only, regardless of whether they were committed in times of war or peace, e.g. destruction of certain types of property can be a war crime but can never be a crime against humanity, while persecution is a crime against humanity but not a war crime.

In the application of A19(1)(j), the numbers of persons who have committed war crimes is relatively low. The majority of cases described in A19(1)(j) involve crimes against humanity.

Differences between crimes against humanity/war crimes and terrorist acts

Terrorist acts have a wider application than war crimes/crimes against humanity because:

- they can be committed against both persons and property;
- they can be isolated incidents; they do not have to be committed in a widespread or systematic manner;
- they can be committed both in times of war or peace.

This wider application is also reflected in the *Immigration Act*, which makes inadmissible any person who is or was a member of a terrorist organization. You may have an applicant who fits the description of all three crimes, e.g. the person belonged to a group which conducted a bombing campaign during a civil war. It is preferable to find such a person described in A19(1)(e) or (f) rather than A19(1)(j) as the concept of membership is easier to establish than the concept of complicity established by the Canadian courts in A19(1)(j) cases.

The definitions of war crimes, genocide, and crimes against humanity contained in Canada's *Crimes Against Humanity and War Crimes Act* are derived from the *Rome Statute of the International Criminal Court*.

Note: Refer to APPENDIX C which lists articles 6, 7 and 8 of the Rome Statute. These articles provide further clarification and examples of what constitutes war crimes, crimes against humanity and genocide.

6 OVERVIEW OF REMEDIES AVAILABLE

In dealing with alleged war criminals and persons who have committed crimes against humanity there are several mechanisms available. The use of one or more of these mechanisms is based on a number of factors including Canada's obligations under domestic and international law, timeliness, effectiveness, and likelihood of success. These mechanisms are:

- criminal prosecution in Canada;
- extradition to a foreign government;
- surrender to an international tribunal;
- revocation of citizenship and deportation;
- denial of visa to persons outside of Canada;
- denial of access (exclusion) to Canada's refugee determination system;
- inquiry and removal under the Immigration Act.

Extradition to a foreign government or surrender to an international tribunal will only occur upon request and will be considered in accordance with Canada's obligations under international law. Criminal prosecution in Canada is taken under Canada's *Crimes Against Humanity and War Crimes Act*. This legislation provides a more effective basis for prosecution than the *Criminal Code* but still presents many challenges in the research and development of evidence and identification and location of witnesses given that a great deal of this case development must be done abroad.

The Canadian statutes which authorize enforcement action against war criminals or persons who have committed genocide or crimes against humanity and a brief description of their relevant provisions are:

The Crimes Against Humanity and War Crimes Act:

- provides for the prosecution of any individual present in Canada for any offence stated in the Act regardless of where the offence occurred;
- creates new offences of genocide, crimes against humanity, war crimes, and breach of responsibility by military commanders and civilian superiors;
- creates new offences to protect the administration of justice at the ICC including the safety of judges and witnesses;
- recognizes the need to provide restitution to victims of offences and provides a mechanism to do so.

The Extradition Act:

- in addition to allowing Canada to extradite to states, allows for the extradition to the International Criminal Tribunals for Rwanda and the former Yugoslavia;
- allows for the use of different forms of evidence that will facilitate extradition to the International Criminal Tribunals and states with a different legal tradition;
- permits the use of video and audio link technology to provide testimony from witnesses located in Canada or abroad;
- establishes clear procedures for the extradition process.

The Immigration Act:

- provides for the examination abroad of immigrants and persons seeking to visit Canada where there is a visitor visa requirement;

- provides two specific grounds of inadmissibility for persons involved in war crimes, genocide or crimes against humanity and outlines procedures for their reporting, inquiry and removal;
- provides for the exclusion from the refugee determination process of persons involved in war crimes, genocide or crimes against humanity;
- limits appeal rights of persons involved in war crimes and crimes against humanity.

The Citizenship Act:

- provides for the revocation of citizenship of persons who have obtained citizenship by fraud or misrepresentation;
- deems that persons who gained admission to Canada by fraud or misrepresentation and subsequently obtained Canadian citizenship are considered to have gained citizenship by fraud or misrepresentation;
- provides that citizenship shall not be granted where the person is under investigation by the RCMP, the Minister of Justice, or the Canadian Security Intelligence Service.

Note: For the texts of the relevant provisions of the *Immigration Act* and the *Citizenship Act* refer to APPENDIX D.

The complete texts of the four statutes will be found on the Department of Justice web site at: <http://www.canada.justice.gc.ca>

7 HOW TO IDENTIFY WAR CRIMINALS

War criminals and persons who have committed genocide or crimes against humanity will be detected in the following manner:

- through verification of data bases to indicate previous dealings with the department overseas and in Canada;
- through examination at ports of entry;
- through examination by war crimes units of cases referred to them;
- through examination of persons being processed to landing;
- during the refugee determination process;
- within the community itself by persons who identify war criminals, in some cases having been victims of atrocities.

General Profile

When reviewing an application for admission to Canada, applicants who are from countries where there is/was internal turmoil, genocide, war, or where human rights abuses are/were widespread and who are one of the following qualify for more in-depth investigation:

- senior government officials, diplomats, or employees of the government;
- current and former military, para-military, security, intelligence and police personnel or individuals employed in technical or scientific backgrounds related to chemical or biological weapons;
- close family relatives of heads of government/state;
- persons suspected of being a member of an organization that is involved in terrorism or crimes against humanity;
- members of armed/opposition/political (guerrilla) groups.

All offices which are involved in the assessment of admissibility, including Vegreville, should apply the general profile to all cases being processed towards landing or being examined for admissibility. In cases where the applicant appears to meet the profile, the case should be referred to the regional War Crimes Unit for further investigation.

Specific Questionnaires

BCW/BCI have developed a series of specific questionnaires which should be employed as appropriate to the situation. Completion of these questionnaires may provide further information to assist you in determining whether the person is inadmissible or whether more in-depth investigation is required. These questionnaires are available in MWCS. (Refer to section 10.12 for information on the Modern War Crimes System.) For offices involved in assessing admissibility that do not have access to MWCS, questionnaires can be obtained from your regional War Crimes Unit or BCW.

8 ESTABLISHING INADMISSIBILITY UNDER A19(1)(J)

Legal Authority

Paragraph 19(1)(j) of the *Immigration Act*, amended on October 23, 2000 reads as follows:

(j) persons who there are reasonable grounds to believe have committed an offence referred to in any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act.

This includes the following:

- persons who commit an offence;
- persons who attempt to commit an offence;
- persons involved in aiding and abetting, encouraging, or being involved in the planning of an offence;
- persons who are members of an organization whose members committed an offence, the higher the position occupied by the person the more likely that the person would be involved;
- persons who are complicit when an offence is committed.

Complicity

A person is considered complicit if, while aware of the commission of atrocities, the person contributes, directly or indirectly, remotely or immediately, to their occurrence. Active or formal membership in the organization responsible for committing the atrocities is not required. For example, the act of guarding an execution site even if one had not participated in an execution constitutes complicity.

Case law in Canadian courts has determined that complicity can be found in the following three situations:

- being present at the scene of a war crime, a crime against humanity or genocide;
- being a member of an organization involved in such crimes; or
- being a member of an organization with a limited brutal purpose.

Complicity – Brutal (Limited Purpose) Organizations

The Federal Court has stated that when looking at membership in an organization, the first step is to look at the type of organization. If the main purpose of the organization is involvement in genocide, war crimes, or crimes against humanity, membership in such an organization is usually sufficient to make the person complicit. (Examples are secret police, security organizations, terrorist groups, death squads, or security courts.)

A brutal limited purpose organization can be described as:

- primarily directed to a limited brutal purpose;
- having perpetrated international offences in the ongoing and everyday course of its activities and its purpose is limited and brutal;
- having the sole intent and purpose of violently and brutally bringing about a course of events; or
- achieving its main purpose by means of crimes against humanity or war crimes.

Second, involvement with the organization must be established. Active or formal membership in the organization responsible for committing the atrocities is not required. In order to establish involvement one or more of the following elements must be present:

- person has devoted himself full time or almost full time to the activities of the organization;
- person is associated with the members of the organization (the longer the period of time, the stronger the involvement); or
- person joins voluntarily and remains in the group to add his personal efforts to the group's cause.

Third, it is essential that the person must have knowledge of the limited brutal purpose of the organization. This knowledge may be inferred from the types of activities the organization is involved with. It may be presumed that if a person is involved with an organization, he is aware of the brutal nature of this organization; however this presumption is rebuttable.

Complicity – Non Brutal Organizations

If the commission of war crimes or crimes against humanity is not the main function of an organization and is not a part of its regular operations but incidental to its mandate, the following three elements must be considered:

- the type of organization;
- the activities of the person;
- the intention of that person in relation to the organization.

The types of organizations that could be involved are:

- regular armed forces;
- militias;
- ministries of the interior including prisons;
- regular police forces;
- liberation movements and political parties;
- other state structures which have the capacity to affect large numbers of people such as ministries and courts.

Canadian courts have determined that the following activities constitute complicity:

- handing over people to organizations (brutal or non-brutal) with the knowledge that they would come to harm;
- providing information to organizations on individuals which result in harm to these individuals;
- providing support functions such as being an intelligence officer, a driver, or a body guard to members of the organization;
- assisting in increasing the effectiveness of a limited brutal purpose organization, such as being a policeman in charge of political prisoners at a military hospital or being in charge of legal training with a police force.

Elements which may clarify intent are:

- knowledge of war crimes or crimes against humanity; one must have known about the activities committed by the organization or been willfully blind to them;
- the greater the number of atrocities committed by the organization the more complicity may be assumed;
- the longer the duration of time that one belongs to the organization the more likely complicity or direct involvement may be assumed;

- having a common purpose; if it can be established that a person has refused to participate in or has complained about the commission of atrocities by others, this person does not share their common purpose and lacks intent; if the person has been disciplined as a result of the refusal or complaint or resigned from the organization the lack of intent is even stronger;
- the circumstances surrounding dissociation such as the earliest possible time the person had to leave, the reason for leaving, and the consequences of leaving the organization, if any.

Defences

A common defence of a person who committed a war crime, genocide, or a crime against humanity is based on the concept of superior orders, i.e. as required by his position he had to follow orders from the government or a superior officer. Although this defence may be used in arguing for a lighter sentence in a criminal prosecution it is not relevant for the purposes of the *Immigration Act* and cannot overcome the ground of inadmissibility under A19(1)(j).

The only defence that has been considered by the Courts (in the context of refugee and immigration law) is that the person acted under duress. The defence of duress can be accepted if the following three conditions are met:

- it results from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person;
- the person acts necessarily and reasonably to avoid this threat;
- the person does not intend to cause a greater harm than the one sought to be avoided.

When this defence is offered and it appears that the ground of inadmissibility may be overcome, it is recommended that the matter be referred to BCW for legal advice prior to rendering a decision on admissibility.

Cases involving prior exclusion by the CRDD

The Federal Court of Appeal has established that exclusion under 1F(a) is equivalent to a finding of inadmissibility under A19(1)(j). Therefore, where the applicant has previously been in Canada and you have evidence that the CRDD has excluded the applicant from refugee determination under 1F(a), in most instances there is no need to conduct any further investigation to establish inadmissibility under A19(1)(j).

There will be situations where the person provides you with additional information that was not available at the time of the CRDD exclusion. Any such additional information must be accepted and considered. Where relevant and credible evidence is brought forward that may bring into doubt the validity of the 1F(a) exclusion, the matter should be referred to BCW for advice.

Note: For samples of refusal letters under A19(1)(j) refer to APPENDIX F.

Note: For samples of reports under A20(1) refer to APPENDIX G.

9 ESTABLISHING INADMISSIBILITY UNDER A19(1)(L)

Legal Authority

Paragraph 19(1)(l) came into force on February 1, 1993 creating a new inadmissible class. It was amended on October 23, 2000 with the proclamation of the *Crimes Against Humanity and War Crimes Act*. It reads as follows:

(l) persons who are or were senior members of or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations, or any act or omission that would be an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

The meaning of "senior members of or officials in the service of a government" is further clarified by subsection 19(1.1) which reads:

For the purposes of paragraph (1)(l), "senior members of or senior officials in the service of a government" means persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power and, without limiting its generality, includes

- (a) heads of state or government;
- (b) members of the cabinet or governing council;
- (c) senior advisors to persons described in paragraph (a) or (b);
- (d) senior members of the public service;
- (e) senior members of the military and of the intelligence and internal security apparatus;
- (f) ambassadors and senior diplomatic officials; and
- (g) members of the judiciary.

Policy Intent

The rationale for these provisions is that although such persons may never have personally participated in terrorism or gross human rights abuses, they nevertheless must share and accept the responsibility for such practices.

Designation of Regimes

A person cannot be described in A19(1)(l) unless the government concerned has been designated by the Minister as a regime that has been involved in terrorism, systematic or gross human rights violations or any act or omission that would be an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*.

Note: For a listing of governments that have been designated refer to APPENDIX H.

BCW and BCI have the responsibility for researching the human rights records of regimes and providing a recommendation to the Minister that a particular government should be designated. This recommendation is provided in consultation with International Region and the Department of Foreign Affairs and International Trade. The following are among the factors that will be considered in deciding whether a regime should be designated:

- condemnation by other countries and organizations;
- the overall position of the Canadian government, including whether a refugee claim by a senior member of the government would undermine Canada's strong position on human rights;

- the nature of the human rights violations;
- immigration concerns such as the number of persons coming from that specific country and whether there might be a concern for the protection of Canadian society.

Requirements to establish inadmissibility

Persons who are described in A19(1)(l) may be broken down into three categories each with its own evidentiary requirements as per the following table:

CATEGORY	EVIDENCE REQUIRED
1. Persons described in 19(1.1)(a),(b), (f-ambassador only), and (g)	Designation of regime Proof of position held
2. Persons described in 19(1.1)(c),(d),(e), and (f-senior diplomatic officials)	Designation of regime Proof of position held Proof that position senior
3. Persons not described in 19(1.1)	Designation of regime Proof that person could exercise significant influence

Category 1: a person in this group is presumed to be or to have been able to exert significant influence on the exercise of that government's power. This is a non-rebuttable presumption which has been upheld by the Federal Court of Appeal. In other words, the fact that a person is or was an official in this category is determinative of the allegation. Aside from the designation and proof that the person holds or held such a position, no further evidence is required to establish inadmissibility.

Category 2: in addition to the above requirements, it must be established that the position the person holds or held is a senior one. In order to establish that the person's position was senior, the position should be related to the hierarchy in which the functionary operates. Copies of organization charts can be located from the Europa World Year Book, Encyclopedia of the Third World, Country Reports on Human Rights Practices (US Department of State) and the Modern War Crimes System (MWCS) database. If it can be demonstrated that the position is in the top half of the organization, the position can be considered senior. This can be further established by evidence of the responsibilities attached to the position and the type of work actually done or the types of decisions made (if not by the applicant then by holders of similar positions).

There is no definition of "senior" in the Immigration Act and no case law from the Federal Court. However, in considering this issue in relation to a military position, a tribunal of the Immigration Appeal Division determined that:

"A senior member of the military would be a person occupying a high position in the military and would be a person of more advanced standing and often of comparatively long service. Advanced standing would be reflected in the responsibilities given to the person and the positions occupied by the person's immediate superiors."

Category 3: in addition to the designation of the regime, it must be established that the person, although not holding a formal position is or was able to exercise significant influence on the actions or policies of the regime. A person who assists in either promoting or sustaining a government designated by the Minister can be characterized as having significant influence over its policies or actions.

The concept of significant influence is not limited to persons who made final decisions on behalf of the regime; it also applies to persons who assisted in the formulation of

these policies, e.g. by providing advice, as well as persons responsible for carrying them out. If a person conducts activities which directly or indirectly allow the regime to implement its policies, the test for significant influence is met. The phrase "government power" in A19(1.1) is not limited to powers exercised by central agencies or departments but can also refer to entities which exercise power at the local level.

Once it is established that the person exerted significant influence, the extent or degree of this influence is not relevant to the finding of inadmissibility; however they are factors that could be considered by the Minister when deciding whether the admission of the person would not be detrimental to the national interest.

Note: For policy and procedures related to national interest considerations refer to OP 17, Section 5.5.

Opportunity for person to be heard

If you are contemplating the refusal of a person under A19(1)(l), the applicant must be given an opportunity to demonstrate that his position is not senior as contemplated by A19(1.1) (category 2) or that he did not or could not exert significant influence on his government's actions, decisions, or policies (category 3). This can be done by mail or by personal interview. In either case, the applicant should be provided with copies of all unclassified documents in possession of the visa officer that will be considered in assessing admissibility.

Consultation with BCW

Officers should be aware of the sensitive nature of A19(1)(l) and the need for careful and thorough consideration of all relevant information. It is not intended that officers should cast the net so widely that all employees of a designated regime are considered inadmissible. Before considering the refusal of an applicant whose position is not listed in A19(1.1), officers are requested to consult with BCW.

Note: For samples of refusal letters under A19(1)(l) refer to APPENDIX F.

Note: For samples of reports under A20(1) refer to APPENDIX G.

10 ELIGIBILITY

The following guidelines concerning eligibility pertain specifically to war crimes cases. They should be read in conjunction with the guidelines on eligibility contained in EC 3, Section 4.

Eligibility

Persons involved in war crimes, genocide, and crimes against humanity may be ineligible to have their refugee claims considered. This exclusion is applied at the eligibility determination stage by a senior immigration officer. A favourable eligibility decision can be re-visited at any time if the original decision was based on fraudulent or misleading information.

In order for an SIO to determine that the person is ineligible to make a claim the following two requirements must be met:

- The person must be found by an adjudicator to be described in A19(1)(j) or (l);
- The Minister must have determined that it would be contrary to the public interest to allow the claim to proceed.

The relevant provision of the Act reads as follows:

46.01(1) **Access Criteria** – A person who claims to be a Convention refugee is not eligible to have the claim determined by the Refugee Division if the person

(e) has been determined by the adjudicator to be

(ii) a person described in paragraph 19(1)(e), (f), (g), (j), (k), or (l) and the Minister is of the opinion that it would be contrary to the public interest to have the claim determined under this Act,

Public Interest

The consideration of public interest involves the assessment and balancing of the specific nature of the person's involvement in war crimes, genocide, or crimes against humanity against whether the admission of the person could be offensive to members of the Canadian public or might represent a potential risk to the Canadian public.

Where it is the intention to seek the Minister's opinion, the role of the regional War Crimes Unit in such cases is to:

- send a notice to the person concerned as outlined in APPENDIX E;
- verify (to the extent possible) the information provided by the person;
- obtain any other information that may be required and provide the person with an opportunity to respond;
- complete and forward to BCW the Request for Minister's Opinion Report.

In preparing the Request for the Minister's Opinion Report, regional war crimes units should be guided by the following principles.

Procedural Fairness

There is extensive case law from the Federal Court on procedural fairness in immigration processing. It is well established that applicants are entitled to know the test they have to meet, to have a meaningful opportunity to present the various types of evidence relevant to their case, to provide a response to the information obtained by the officer and to have their evidence fully and fairly considered by the decision-maker. The evolution of this doctrine in immigration processing has resulted in the following rules for the processing of requests for the Minister's opinion.

- The Minister must make the decision on complete information. Therefore all documents provided by the applicant must be forwarded and presented to the Minister

for consideration. It is not acceptable that the contents of such documentation be summarized in a memorandum to the Minister without attaching the primary documentation.

- Except for documentation that must be protected for security reasons, the applicant is entitled to receive and comment on any relevant documents obtained by the officer that will be considered by the Minister. (Where information must be protected contact BCW for guidance).
- The person is entitled to be advised of issues raised by the officer and to respond to those issues.

The Request for the Minister's Opinion Report should consist of three parts as follows:

- The specific nature of the involvement in war crimes, genocide, or crimes against humanity and considerations concerning whether the admission might be offensive to Canadians or might pose a risk to the public;
- Details of immigration status and H&C considerations;
- Recommendation.

In order to address the first part the following should be addressed (not all questions will be applicable):

- Is there satisfactory evidence that the person does not represent a danger to the public?
- Was the activity an isolated event? If not, over what period of time did they occur?
- When did the activities occur?
- Was violence involved?
- Was the person personally involved or complicit in atrocities?
- Does the person show remorse for the activities?
- Has the person been forthright concerning his role in these activities or has he tried to minimize his role?
- Is the regime internationally recognized as one that uses violence to achieve its goals?
- What was the length of time that the applicant was a member of the regime?
- Is the regime still involved in criminal or violent activities?
- What was the role or position of the person within the regime?
- Did the person benefit from his membership or his involvement with the regime?
- Is there evidence to indicate that the person was not aware of the atrocities committed by the regime?
- What evidence exists to show that ties with the regime have been severed?
- What are the details concerning dissociation from the regime? Did the person dissociate himself from the regime at the first opportunity? Why?
- Is the person currently associated with any individuals still involved in the regime?
- Is there any indication that the person may be benefiting from assets obtained while a member of the regime e.g. is the person's lifestyle consistent with his personal net worth?
- Is there any indication that the person might be benefiting from previous membership in the regime e.g. does the person's status in the community demonstrate any special treatment due to former membership in the regime?

- What is the person's current attitude towards the regime, his membership, and his activities on behalf of the regime?
- Does the person show any remorse for his membership or the activities of the regime?
- What is the person's current attitude towards violence to achieve political change?
- What is the person's attitude towards the rule of law and democratic institutions as they are understood in Canada?

The second part of the submission should deal with immigration and humanitarian and compassionate considerations. This includes:

- Details on immigration status;
- Canadian interest including family in Canada and abroad;
- Risk assessment should the person be required to return (officers may wish to consult a PCDO);
- Humanitarian and compassionate considerations.

The third part of the submission should contain a recommendation with supporting rationale. The rationale should demonstrate a thorough assessment and balancing of all factors in accordance with the definition of public interest stated above.

When submitting the request you should include copies of all relevant documents. This may include:

- copy of the 20(1) or 27 report;
- information from the Personal Information Form (PIF);
- CSIS/RCMP intelligence reports;
- reports from other sources e.g. Human Rights Organizations;
- media reports;
- CIC research results on country conditions;
- person's submissions;
- medical/psychological reports;
- any other relevant information.

The submission with all supporting documents should be sent to BCW by mail to the following address:

Director Modern War Crimes
Case Management Branch
Citizenship and Immigration
Jean Edmonds North Tower
300 Slater Street
Ottawa, Ont. K1A 1L1

Role of BCW

Upon receipt of the above, BCW will:

- review the request and all documentation;
- conduct any further research that may be required;
- prepare and forward a Request for Minister's opinion (RMO);
- advise the War Crimes Unit of the Minister's decision.

Upon receipt of the Minister's decision you will be advised. Should the Minister decide that it is not in the public interest to have the claim determined, you will be provided with an official notification signed by the Minister. Upon receipt of this notification, and a ruling by the adjudicator that the person is described in A19(1)(j) or (l) an SIO can then make a decision on eligibility.

Re-determination of Eligibility.

Where there is a positive decision on eligibility and it becomes apparent that the decision was based on fraud, misrepresentation, or omission of a material fact and the person would not otherwise have been eligible to have the claim referred, an SIO can revisit the decision and render the person ineligible to have the claim considered. Re-determination of eligibility can occur at any time including after a decision by the CRDD on refugee determination. On being notified, the CRDD must terminate consideration of the claim. If a decision has been rendered it is considered null and void. The authority for this procedure is found in A46.4(1) and (2).

11 INTERVENTION AND EXCLUSION

The following guidelines concerning intervention and exclusion pertain specifically to war crimes cases. They should be read in conjunction with the guidelines on the Minister's role at CRDD hearings, contained in EC 5, Section 18, and the guidelines on exclusion, EC 5, Section 19 and EC 5, APPENDIX J.

There will be instances where war crimes information not involving misrepresentation comes to light after the referral of the case to the CRDD. In such cases the Minister may request permission to intervene at the refugee determination hearing pursuant to A69.1(5) and argue for exclusion pursuant to article 1F(a) of the Convention.

Article 1F(a) reads as follows:

F. The provisions of this convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

In order to successfully argue exclusion there are two elements to be established:

- serious grounds for considering; and
- the person has committed;

a crime against humanity as defined in article 7 of the Rome Statute (see APPENDIX C) or

a crime against peace [crimes against peace (or the crime of aggression as it is now known in international law) has been defined by the Nuremberg International Military Tribunal as "planning, initiation, or waging of war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing"];

or a war crime as defined in article 8 of the Rome Statute (see APPENDIX C).

Comparison Between A19(1)(j) and Article 1F(a)

There are similarities and differences between these two provisions as follows:

Similarities

- The evidentiary test to be applied in A19(1)(j) cases is "reasonable grounds". The test to be applied in 1F(a) cases is "serious grounds for considering". The Federal Court of Appeal has ruled that the meaning is the same.

Note: For more information concerning the meaning of 'reasonable grounds' refer to OP 17, Section 2.2.

- The concept of complicity applies equally to A19(1)(j) and article 1F(a).

Differences

- A19(1)(j) includes genocide but does not include crimes against peace; article 1F(a) does not mention genocide but includes crimes against peace. It should be noted that the extensive listing of crimes against humanity in article 7 of the Rome Statute also describe acts of genocide.
- A19(1)(j) allegations are argued before an adjudicator at an inquiry; article 1F(a) is argued before the CRDD;
- Article 1F(a) has application at only one procedure under the Act, i.e. exclusion before the CRDD; A19(1)(j) has application at several procedures under the Act, namely;
 - Reporting permanent residents, A27(1)(g) and (h)

- Reporting non-residents, A27(2)(a)
- Deportation order required, A32(5)
- Deportation order required, A32(7)
- Report by Minister and Solicitor General to Review Committee, A39(2)
- Filing of opinion with adjudicator, A39(4)
- Issuance of security certificate, permanent residents, A40(1)
- Issuance of certificate, non-residents, A40.1(1)
- Certificate is conclusive proof of allegations, A40.1(7)
- Minister's opinion that determination of refugee claim is not in the public interest, A46.01(1)(e)(ii)
- War criminals found to be refugees cannot be granted permanent residence, A46.04(1)
- Execution of removal order stayed for seven days, A49(1)(d)
- Convention refugees can with removed with Minister's opinion that person constitutes danger to security, A53(1)(b)
- Cannot appeal removal order to IAD, A70(4)(b)
- Report to Review Committee in sponsored cases, A81(2)(b)
- A19(1)(j) cannot be used for persons who became permanent residents or committed war crimes before October 30, 1987, [A27(1)(g) and (h)]; there are no time limits on the application of article 1F(a).

12 RESOURCES AND SUPPORT AVAILABLE

Modern War Crimes System (MWCS)

The MWCS is intended to be an extensive database of war crimes related information compiled by BCW and provides internet access to much of the open-source information currently held in the Resource Centre. Much of the information contained in MWCS is the result of previous queries investigated by the Research Centre and as such the database is under constant expansion. This includes information on human rights violations, jurisprudence, organizations, movements, and geography. The system indexes and cross-references by name, place, date and event. Full text documents are also available including operational procedures, standardized forms and questionnaires, updates on current events and online training for existing and new functions. MWCS will be available to all missions abroad, war crimes units in Canada, and ports of entry during 2002.

Internet Resources

Extensive open-source information is available through the internet to assist you in researching current and historical information from a wide variety of sources. Officers are encouraged to conduct their own research and identify further links or sites that provide useful information. These links and comments as to their usefulness should be forwarded to BCW to assist in keeping the list of internet addresses current.

Note: *A listing of current of internet addresses will be found in MWCS.*

Research Centre

Officers are expected to conduct their own research using the MWCS. Where MWCS does not have the required information or there is a need to access classified information, a query should be made to the regional War Crimes Unit who will direct the query to the BCW Research Centre if necessary.

General program assistance

As indicated throughout this chapter there will be situations where policy or legal advice is required or assistance in dealing with problematic or high profile cases. In such instances you should seek advice from the regional War Crimes Unit who will consult with BCW if required. BCW will review the request and forward it to the appropriate analyst, researcher, or the legal adviser.

Emergency Situations

Situations may arise where immediate assistance is required. BCW staff are on call duty 24x365 for emergency situations. Should a situation arise where war crimes expertise is required immediately and local or regional assistance is not available you may contact the Immigration Warrant Response Centre at 613 954-2344 who will forward your request to the appropriate BCW personnel.

APPENDIX A

WAR CRIMES AMENDMENTS TO THE IMMIGRATION ACT AND REGULATIONS

October 30, 1987 – Bill C-71 created 19(1)(j), a new ground of inadmissibility pertaining specifically to war crimes and crimes against humanity.

January 1, 1989 – Bill C-55 added to the *Immigration Act* the exclusionary clauses of the 1951 Convention Relating to the Status of Refugees. Article 1F(a) of the Convention excludes protection under the Convention to persons who have committed or are complicit in war crimes or crimes against humanity.

February 1, 1993 – Bill C-86 created 19(1)(l), a new ground of inadmissibility pertaining to individuals who are or were senior members of regimes designated by the Minister as having committed gross human rights violations or war crimes.

July 10, 1995 – Bill C-44 enabled senior immigration officers to render ineligible decisions at any stage of the refugee determination process. This included the authority to declare a positive refugee decision null and void if it was determined that the original decision on eligibility was based on misrepresentation.

May 1, 1997 – Amendments to the Post Determination Refugee Claimants in Canada Class (PDRCC) and Deferred Removal Orders Class (DROC) regulations restricted persons excluded under Article 1F(a) of the Convention from accessing these reviews.

June 17, 1999 – Bill C-40 introduced changes to the *Immigration Act* concurrent with the proclamation of the new *Extradition Act*. These included three new provisions 69.1(12), (14), and (15) designed to harmonize the extradition and refugee determination processes.

October 23, 2000 – Bill C-19 modified the description of A19(1)(j) and (l) concurrent with the proclamation of the *Crimes Against Humanity and War Crimes Act*. The grounds of inadmissibility are now based on the definitions of war crimes, crimes against humanity, and genocide contained in the new act.

APPENDIX B
CRIMES AGAINST HUMANITY AND WAR CRIMES ACT

4.(1) Every person is guilty of an indictable offence who commits

- a) genocide;
- b) a crime against humanity; or
- c) a war crime.

(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence,

(2) Every person who commits an offence under subsection (1) or (1.1)

- a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and
- b) is liable to imprisonment for life, in any other case.

(3) The definitions in this subsection apply in this section.

“crime against humanity” means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

“genocide” means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

“war crime” means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

(4) For greater certainty, crimes described in Articles 6 and 7 and paragraph 2 of Article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law. This does not limit or prejudice in any way the application of existing or developing rules of international law.

APPENDIX C

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, ARTICLES 6, 7 AND 8

Article 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - a) Murder;
 - b) Extermination;
 - c) Enslavement;
 - d) Deportation or forcible transfer of population;
 - e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - f) Torture;
 - g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
 - h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - i) Enforced disappearance of persons;
 - j) The crime of apartheid;
 - k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
 - a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack;
 - b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction or part of a population;
 - c) "Enslavement" means the exercise of any or all the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

- d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- f) "Forced pregnancy" means the unlawful confinement, of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Article 8 War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as a part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, "war crimes" means:
 - a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile power;
 - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.
 - b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
 - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter

of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefined and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilisation, or any other form of sexual violence also constituting grave breach of the Geneva Conventions;
 - (xxiii) Utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiv) Intentionally directing attacks against buildings, material, medical to and transport, and personnel using the distinctive emblems of Geneva Conventions in conformity with international law.
- c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed **hors de combat** by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages;
 - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.
- d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given objects under the law of armed conflict;
 - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilisation, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary;
 - (x) Declaring that no quarter will be given;

- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.
- f) Paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organised armed groups or between such groups.

APPENDIX D

WAR CRIMES - RELEVANT PROVISIONS OF THE IMMIGRATION ACT AND CITIZENSHIP ACT

Immigration Act

3. Objectives – It is hereby declared that Canadian immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada recognizing the need

(i) to maintain and protect the health, safety, and good order of Canadian society;

19. (1) Inadmissible persons – No person shall be granted admission who is a member of any of the following classes:

(j) persons who there are reasonable grounds to believe have committed an offence referred to in any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

(l) persons who are or were senior members of, or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations or any act or omission that would be an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

Meaning of “Senior Members of or Senior Officials in the Service of a Government” – For the purposes of paragraph (1)(l) “senior members of or senior officials in the service of a government” means persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power and, without limiting its generality, includes

(a) heads of state or government;

(b) members of the cabinet or governing council;

(c) senior advisors to persons described in paragraph (a) or (b);

(d) senior members of the public service;

(e) senior members of the military and of the intelligence and internal security apparatus;

(f) ambassadors and senior diplomatic officials; and

(g) members of the judiciary.

27(1) Reports on permanent residents – An immigration officer or a peace officer shall forward a written report to the Deputy Minister setting out the details of any information in the possession of the immigration officer or peace officer indicating that a permanent resident is a person who

(a) is a member of an inadmissible class described in paragraph 19(1)(c.2), (d), (e), (f), (g), (k), or (l);

(g) is a member of the inadmissible class described in paragraph 19(1)(j) who was granted landing subsequent to the coming into force of that paragraph; or

(h) became a member of the inadmissible class described in paragraph 19(1)(j) who was granted landing subsequent to the coming into force of that paragraph.

27(2) Reports on visitors and other persons – An immigration officer or a peace officer shall, unless the person has been arrested pursuant to subsection 103(2), forward a written report to the Deputy Minister setting out the details of any information in the possession of the immigration officer or peace officer indicating that a person in Canada, other than a Canadian citizen or permanent resident, is a person who

(g) came into Canada or remains in Canada with a false or improperly obtained passport, visa or other document pertaining to that person's admission or by reason of any fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or by any other person;

(i) ceased to be a Canadian citizen pursuant to subsection 10(1) of the *Citizenship Act* in the circumstances described in subsection 10(2) of that Act;

46.01(1) **Access Criteria** – A person who claims to be a Convention Refugee is not eligible to have the claim determined by the Refugee Division if the person

(e) has been determined by an adjudicator to be

(ii) a person described in paragraph 19(1)(e), (f), (g), (j), (k), or (l) and the Minister is of the opinion that it would be contrary to the public interest to have the claim determined under this Act.

Schedule – Sections E and F of Article 1 of the United Nations Convention Relating to the Status of Refugees

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious grounds for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes;

Citizenship Act

10.(1) **Order in cases of fraud** – Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,

(a) the person ceases to be a citizen, or

(b) the renunciation of citizenship by the person shall be deemed to have had no effect, as of such date as may be fixed by order of the Governor in Council with respect thereto.

(2) **Presumption** – A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.

18.(1) **Notice to person in respect of revocation** – The Minister shall not make a report under section 10 unless the Minister has given notice of his intention to do so to the person in respect of whom the report is to be made and

(a) that person does not, within thirty days after the day on which the notice is sent, request that the Minister refer the case to the Court (Federal Court, Trial Division); or

(b) that person does so request and the Court decides that the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances.

(2) **Nature of Notice** – The notice referred to in subsection (1) shall state that the person in respect of whom the report is to be made may, within thirty days after the day on which the notice is sent to him, request that the Minister refer the case to the Court, and such notice is sufficient if it is sent by registered mail to the person at his latest known address.

(3) **Decision Final** – A decision of the Court made under subsection (1) is final and, notwithstanding any other Act of Parliament, no appeal lies therefrom.

22. (1) **Prohibition** Notwithstanding anything in this Act, a person shall not be granted citizenship under section 5 or subsection 11(1) or administered the oath of citizenship

(c) while the person is under investigation by the Minister of Justice, the Royal Canadian Mounted Police or the Canadian Security Intelligence Service, or is charged with, on trial for, subject to or a party to an appeal relating to, an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

(d) if the person has been convicted of an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

APPENDIX E
SAMPLE NOTICE TO PERSON CONCERNED

Dear----:

Re: Notice of intention to request the Minister's opinion pursuant to subparagraph 46.01(1)(e)(ii) of the Immigration Act

This is to inform you that Citizenship and Immigration Canada (CIC) intends to request the opinion of the Minister that it would be contrary to the public interest to have your claim for refugee status proceed under the Immigration Act.

The request for this opinion is based on information that you may be a person described in paragraph 19(1)(j) of the Act. If you are found to be so described by an adjudicator and the Minister issues his/her opinion that it would not be in the public interest to have the claim proceed, then you would be determined ineligible to have your claim determined. If the Minister issues his/her opinion and you are subsequently not found by an adjudicator to be a person described in paragraph 19(1)(j) of the Immigration Act, then the Minister's opinion would have no effect and your claim could continue.

The consideration of public interest involves the assessment and balancing of the specific nature of your involvement in (*specify war crimes, genocide, or crimes against humanity*) against whether your admission to Canada could be offensive to members of the Canadian public or might represent a potential risk to the Canadian public. As the consequence of this opinion could result in denying your refugee claim, the Minister will also consider any risks that you could be exposed to should you return to the country from which you came as well as any humanitarian and compassionate factors. The book of inquiry documents and other relevant documentation are enclosed for your information and will be forwarded to the Minister with our request for an opinion pursuant to subparagraph 46.01(1)(e)(ii) of the Act.

CIC may also refer to your refugee claim material and to the most recent and current country information available at the Immigration and Refugee Board Documentation Centres.

Before the Minister forms his/her opinion you are entitled to make written submissions and submit any documentation that you believe is relevant. Your submission should be guided by the public interest considerations mentioned above. Please note that your submission and any documentation must be in one of Canada's official languages and must be received by this office within 15 days of receipt of this letter. Your submissions and supporting documents will be considered by the Minister before a decision is rendered.

You will be informed in writing of the Minister's decision. Please direct your submissions and any questions to this office.

Sincerely,

APPENDIX F

WAR CRIMES – SAMPLE REFUSAL LETTERS FOR APPLICATIONS IN CANADA

IP5 provides guidelines on the processing of H&C applications from within Canada. IP 5, APPENDIX C provides sample letters for the processing and refusal of these applications. The following specifics should be included in the sample refusal letter outlined in IP 5, APPENDIX C.

A19(1)(j)

Your application is refused because there is reason to believe that you are a member of the inadmissible class of persons described in paragraph 19(1)(j) of the *Immigration Act* namely:

(j) persons who there are reasonable grounds to believe have committed an offence referred to in any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

Sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act* state in part:

“crime against humanity” means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

“genocide” means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not constitutes a contravention of the law in force at the time and in the place of its commission.

“war crime” means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

Specifically, there is reason to believe that, in (*specify time period*), while (*specify active in or member of organization including in which country*) you committed (*if personal involvement*) /were complicit in (*if no personal involvement*) the following war crime, genocide or crime against humanity: (*specify the activity plus short description from above; for further specifics refer to APPENDIX C*) against (*identify the person or group of persons who has been victimized by the person concerned or by the organization to which he belonged*).

(For persons who were previously excluded from refugee determination by the CRDD for 1F(a) add)

You were previously excluded from entitlement to protection as a Convention refugee, in Canada, by the Convention Refugee Determination Division of the Immigration and Refugee Board by virtue of exclusion ground 1F(a) for your involvement with and complicity in the commission of crimes against humanity. This decision was upheld by the Federal Court on (*date*).

It has been established by the Federal Court of Appeal that an exclusion under 1F(a) establishes inadmissibility to Canada under paragraph 19(1)(j) of the *Immigration Act*.

A19(1)(l)

Your application is refused because there is reason to believe that you are a member of the inadmissible class of persons described in paragraph 19(1)(l) of the *Immigration Act*, namely:

(l) persons who are or were senior members or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations, or any act or omission that would be an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

Sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act* state in part:

“crime against humanity” means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

“genocide” means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not constitutes a contravention of the law in force at the time and in the place of its commission.

“war crime” means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

Subsection 19(1.1) provides as follows

For the purposes of paragraph (1)(l) “senior members of or senior officials in the service of a government” means persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power and, without limiting its generality, includes

- (a) heads of state or government;
- (b) members of the cabinet or governing council;
- (c) senior advisors to persons described in paragraph (a) or (b);
- (d) senior members of the public service;
- (e) senior members of the military and of the intelligence and internal security apparatus;
- (f) ambassadors and senior diplomatic officials; and
- (g) members of the judiciary.

Specifically, there is reason to believe that, in (*specify time period*) you were a senior member or official with the government of (*specify the designated regime including the time period indicated in the designation*), namely, [*specify one of the functions set out in subsection 19(1.1)(a) to (g) or indicate that the person was able to exert significant influence on the exercise of government power of the regime in question if function not included in 19(1.1)*]

APPENDIX G
SAMPLE 20(1) REPORTS

A19(1)(j)

This report is based on information in my possession as follows:

In *(specify time period)* while *(specify active in or member of organization including in which country)* Mr.---- committed *(if personal involvement)/was complicit in (if no personal involvement)* the following war crime, crime against humanity, or act of genocide:*(specify the activity plus short description from the list of crimes in APPENDIX C)* against *(identify the person or group of persons who has been victimized by the person concerned or by the organization to which he belonged)*.

A19(1)(l)

This report is based on information in my possession as follows:

In *(specify time period)* Mr. ---- was a senior member or official of the government of *(specify the designated regime including the time period indicated in the designation)*, namely, *(specify one of the functions set out in subsection 19(1.1)(a) to (g) or indicate that person was able to exert significant influence on the exercise of government power of the regime in question if function not included in 19(1.1)*

APPENDIX H

DESIGNATED GOVERNMENTS

- 1) **designated 16 June 1993:** the Bosnian Serb regime between 27 March 1992 until 10 October 1996;
- 2) **designated 12 October 1993:** the Siad Barré regime in Somalia between 1969 and 1991;
- 3) **designated 8 April 1994:** the former military governments in Haiti between 1971 and 1986, and between 1991 and 1994 except the period August -December 1993;
- 4) **designated 21 October 1994:** the former Marxist regimes of Afghanistan between 1978 and 1992;
- 5) **designated 3 September 1996:** the governments of Ahmed Hassan Al-Bakr and Saddam Hussein in power since 1968;
- 6) **designated 27 April 1998:** the government of Rwanda under President Habyarimana between October 1990 and April 1994, as well as the interim government in power between April 1994 and July 1994;
- 7) **designated 30 June 1999, amended 14 March 2001:** the governments of the Federal Republic of Yugoslavia and the Republic of Serbia (Milosevic) between February 28, 1998 and October 7, 2000;
- 8) **designated 14 March 2001:** the Taliban regime in Afghanistan from September 27, 1996.

APPENDIX I **REGIONAL WAR CRIMES UNITS**

<p align="center">Atlantic Region</p> <p>Program Specialist CIC Atlantic Regional Office 1875 Brunswick Street Halifax, Nova Scotia B3J 2G8 Tel: 902-426-6920 Fax: 902-426-4241</p>	<p align="center">Prairies/NWT Region</p> <p>Intelligence Officer – War Crimes Coordinator CIC Prairies/NWT Regional Office 25 Forks Market Road Room 400 Winnipeg, Manitoba R3C 4S9 Tel: 204-983-2188 Fax: 204-983-2867</p>
<p align="center">Quebec Region</p> <p>Project Director War Crimes Unit CIC Enforcement 1010 St-Antoine Street West 2nd Floor, Montreal, Quebec H3C 1B2 Tel: 514-283-8171 Fax: 514-496-6613</p>	<p align="center">B.C./Yukon Region</p> <p>War Crimes Coordinator Enforcement CIC Suite 700 300 West Georgia Street Vancouver, B.C. V6B 6C8 Tel: 604-666-8663 Fax: 604-666-9559</p>
<p align="center">Ontario Region</p> <p>Operations Manager War Crimes Unit Greater Toronto Enforcement Centre 6900 Airport Road Entrance 2B Mississauga, Ontario L4V 1E8 Tel: 905-612-6089 Fax: 905-612-6082</p>	<p align="center">CPC Vegreville</p> <p>Strategic Analysis Officer Case Processing Centre 6212 55th Avenue Vegreville, Alberta T9C 1W5 Tel: 780-632-8083/8011 Fax: 780-632-8100</p>

IMMIGRATION

Canada

Chapter PE 9

A20 Reports, Voluntary Withdrawal and Directions to Return to the U.S.





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

A20 Reports, Voluntary Withdrawal and Directions to Return to the U.S.

Abbreviations and Short Forms	
Act	<i>Immigration Act</i> , as amended
CIC	Canada Immigration Centre
CPO	Case Presenting Officer
FOSS	Field Operations Support System
IO	Immigration Officer
POE	Port of Entry
SIO	Senior Immigration Officer

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how an immigration officer at a port of entry determines that a person is inadmissible and either reports the person to a senior immigration officer or allows the person to leave Canada voluntarily.

1.2 Policy intent

Canadian immigration policy aims for dealing with persons who may be inadmissible to Canada are:

- to ensure that any person who seeks admission to Canada permanently or temporarily is subject to standards of admission that do not discriminate in a manner inconsistent with the *Canadian Charter of Rights and Freedoms*
- to maintain and protect the health, safety and good order of Canadian society, and
- to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity [A3].

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, section 3.

2. ESTABLISHING INADMISSIBILITY

As an immigration officer (IO) at a port of entry (POE) examining persons seeking admission to Canada, you may form the opinion that it would or may be contrary to the Act or its regulations to grant admission or otherwise let a person come into Canada [A20(1)].

Once you have formed the opinion that it would be contrary to the Act or its regulations to grant admission to the person seeking to come into Canada, you must decide whether to allow that person to leave Canada [A20(1)(b)] or to report that person in writing to a senior immigration officer (SIO) [A20(1)(a)].

2.1 Evidence requirements for specific allegations in A19

To form the opinion that a person may be inadmissible to Canada, you must understand evidentiary requirements for immigration matters and exactly what is required to substantiate an allegation under A19.

Proof beyond a reasonable doubt is the evidentiary rule only in criminal cases. The standard of proof in immigration matters is the *balance of probabilities*. The evidence on the whole must show that the facts as alleged are more probable than not.

2.1.1. Reasonable grounds

The term “reasonable grounds” occurs in several paragraphs of A19. The Federal Court of Canada—Appeal Division (Federal Court of Appeal) has stated that it is enough to show reasonable grounds for believing the allegation: the fact itself need not be proven [*Jolly v. Minister of Manpower and Immigration*, [1975] F.C. 216]. The evidence gathered must tend to justify the allegation in an objective fashion. Consequently you should include in your report all evidence that you consider credible and trustworthy (facts, circumstances and other information), and that would lead a reasonable and cautious person to arrive at a certain conclusion. Remember that reasonable grounds constitute more than mere suspicion.

2.1.2. Acts and omissions

Several paragraphs of A19 deal with acts and omissions that occurred outside Canada [A19(1)(c.1)(ii), A19(1)(c.2), A19(1)(j), A19(2)(a.1)(ii)].

An act can be defined as something done, a completed action, something that happened, an event or a circumstance; or a negligence or the failure to do something, including the deliberate failure to act.

The goal of A19(1)(c.1)(ii), A19(1)(c.2) and A19(2)(a.1)(ii) is to refuse admission to persons against whom there is clear, objective evidence of specific criminal activity that would likely result in a conviction if there was a prosecution in Canada. Thus you must carefully assess the evidence provided before you make an allegation. The nature of the evidence must be such that an immigration adjudicator would be satisfied that all the elements necessary to constitute the specific offence alleged to have been committed are present. A decision by investigating authorities not to press charges, in a country whose judicial system is respected by Canada, constitutes *prima facie* evidence that a crime was not committed or that there was insufficient evidence to prosecute successfully. When a final

2.1.3. Requesting Minister's opinions and security certificates

decision has been made not to prosecute or when a court has made a finding of *not guilty*, the presumption—of—innocence principle should lead to a conclusion that there is not enough evidence to report the person.

Because charges do not automatically equate to proof of guilt, you should ask persons who state that they have been charged whether they have *committed* the crimes for which they were charged. If they deny any wrong—doing, you must obtain other evidence (such as police reports) of their acts or omissions to report them. This is the only fair way of dealing with these cases under the presumption that the persons are innocent until proven guilty.

If evidence points to the commission of a serious criminal act and if the person appears to be a fugitive from justice, you should report the case. *The act or omission provisions are not intended to be used for minor offences, nor should you use them as a means of reporting persons who have been convicted and evidence of the conviction is not readily available.*

On occasion you may be called on to initiate a request for a Minister's opinion [A46.01(1)(e)(i) or A46.01(1)(e)(ii)] or a security certificate [A40(1), A40.1, or A82]. For information on requesting Minister's opinions and security certificates, see APPENDIX A.

2.2 Evidence for inadmissible cases

When you are about to write a report under A19, you should bear in mind that you must have reasonable grounds to believe that each element of the allegation is satisfied. Remember that in all cases the evidence you gather may be used at an immigration inquiry and that, as a whole, it should be of a quality sufficient to convince an adjudicator of the veracity of the allegation in your report.

For POE cases, the burden of proof rests on the client. Once the inquiry has started, however, the case presenting officer (CPO) must be prepared to rebut any statements made by the person concerned while under oath. Therefore you must provide adequate documentation to substantiate the allegation. Each of the allegations has specific requirements for evidence.

2.2.1. A19(1)(a)

Paragraph 19(1)(a) of the Act describes persons who are inadmissible to Canada for medical reasons.

When you are of the opinion that a visitor or a person in possession of a permit may be a member of an inadmissible class described in A19(1)(a), you may require that person to undergo a medical examination by a medical officer [A11(2)]. You may form the opinion that a person may be medically inadmissible by:

- observation: The person may appear to be sick or may require assistance, and
- questioning: Has the person recently been discharged from hospital? Has the person recently been sick? Is he or she on medication for a serious illness?

Where there are reasonable grounds for you to believe that a person is medically inadmissible, you may take the following steps. You may adjourn the examination under A12(3) and issue medical forms. You should refer

2.2.2. A19(1)(b)

the person to a designated doctor. Whenever possible you should make the appointment for the person, and request the doctor to convey the results to the designated medical officer by the quickest means possible. If you are of the opinion that public health or safety is at risk, you should make an order to detain the person and notify the designated medical officer. You should be aware that under these circumstances A13(1) should not be invoked except in those rare instances where you cannot commence the examination. These are the first steps in gathering admissible evidence in A19(1)(a) cases.

The evidence you require in such cases is a report signed by one medical officer, and concurred in by another, which finds that the person concerned is or is likely to be for medical reasons:

- a danger to public health, or
- a danger to public safety, or
- a person whose admission would cause or might reasonably be expected to cause excessive demands on health or social services.

A designated medical officer is a doctor designated by the Minister of National Health and Welfare as medical officer for the purposes of the Act [A2(1)].

The medical officer's opinion must be supported by at least one other medical officer. If there is only one signature on the medical report, you must take the necessary action to obtain a second medical officer's opinion, either in writing or as oral evidence presented at the inquiry.

Remember that you cannot complete an A20 report until you have received the results of the medical examination.

Under A46.04(3), the provisions governing inadmissibility on medical grounds do not apply to Convention refugees *as it pertains to their admissibility for landing*.

Paragraph 19(1)(b) of the Act applies to persons "where there are reasonable grounds to believe" are not able, will be unable, or do not wish to support themselves or their dependants, except those persons who can demonstrate that adequate arrangements have been made for their care and support. Adequate arrangements do not include receiving social welfare.

In the past, persons who were in Canada temporarily and receiving social assistance were in some cases successful when they argued that they should not be found described in A19(1)(b) because they were receiving social assistance, and consequently had made the necessary arrangements to support themselves. A19(1)(b) is now designed to exclude persons intending to live or living on social assistance, and to prevent abuse of the social service systems.

To prove inadmissibility, you must establish by prudent questioning:

- that the person is unable or unwilling to support himself or herself and his or her dependants, and
- that the person has not established to your satisfaction that appropriate arrangements (which do not include receiving welfare or social assistance) have been made for his or her care and support.

Under A46.04(3) this provision does not apply to Convention refugees who receive social assistance, insofar as it cannot be used to deny landing.

2.2.3. A19(1)(c), A19(1)(c.1) and
A19(1)(c.2)

Paragraphs 19(1)(c), 19(1)(c.1) and 19(1)(c.2) of the Act refer to serious crimes (indictable offences) punishable by imprisonment of ten years or more.

- (a) Paragraph 19(1)(c) of the Act refers to convictions for offences committed in Canada that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more.

The provisions also apply to persons who there are reasonable grounds to believe:

- have been convicted *outside Canada* of an offence that, if committed in Canada, would constitute an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more [A19(1)(c.1)(i)], or
- have committed *outside Canada* an act or omission that constitutes an offence under the laws of the place where the act or omission occurred, and that if committed in Canada would constitute an offence that may be punishable under an Act of Parliament by a maximum term of imprisonment of ten years or more [A19(1)(c.1)(ii)], or
- are or were members of an organization that there are reasonable grounds to believe is or was engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of any offence under the *Criminal Code*, the *Narcotic Control Act* or Part III or IV of the *Food and Drugs Act* that may be punishable by way of indictment or in the commission outside Canada of an act or omission that, if committed in Canada, would constitute such an offence [A19(1)(c.2)].

- (b) Persons found to be inadmissible under A19(1)(c.1) can request that an exception be made in their case about their future admissibility. They must satisfy the Governor in Council that they have rehabilitated themselves and that at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be.

- (c) Persons described in A19(1)(c.2) must satisfy the Minister that their admission to Canada would not be detrimental to the national interest.

To establish inadmissibility under A19(1)(c), the appropriate officer must obtain the following evidence:

- the indictment, commonly called the information, which contains the accusations against the accused.
- a conviction certificate or court document stating the offence and the disposition of the case.
- the text of the Canadian legislation under which the person was convicted, to demonstrate that the offence is punishable under an Act of Parliament by a maximum term of imprisonment of ten years or more. Even if the adjudicator may take judicial notice of the Canadian legislation, you should place a photocopy of the text of the legislation concerned on file for presentation if necessary.

- the testimony of witnesses or declarations of the person concerned. This method of establishing inadmissibility (used in the absence of documentary evidence) is the least desirable, as the person concerned often cannot recite the exact details of the conviction, which in turn makes the process of establishing equivalency very difficult.
- any other documentary evidence that may assist in the process.

For a person to be found described in **A19(1)(c.1)**, it is sufficient that there exist reasonable grounds to believe that there has been a conviction [A19(1)(c.1)(i)] or the commission of an offence or an act or omission [A19(1)(c.1)(ii)]. Where it is impossible to obtain a certificate of conviction, one of the following documents may suffice:

- a statutory declaration by the person concerned outlining the nature of the conviction
- a statutory declaration by the examining officer as to the details of the admission of the person concerned
- a statutory declaration by witnesses, or
- a statutory declaration outlining the details of a telephone conversation with a custodian of criminal records in a foreign country.

Appropriate evidence includes:

- documentary evidence (such as a certificate of conviction or other document) or any other credible and trustworthy information.
- evidence of an act or omission demonstrating that the person is inadmissible under A19(1)(c.1)(ii). This may be secret or classified reports or a certificate under A40.1. For these types of cases, you should always contact Case Management Branch, Security Review, at National Headquarters (tel.: 819-994-6306).
- texts of both the Canadian and the foreign legislation, to establish an equivalence.
- evidence that the Governor in Council has not indicated satisfaction that the person concerned has been rehabilitated, and that at least five years have elapsed since either the termination of the sentence imposed for the offence or the commission of the act or omission, as the case may be.

You must not delay completing the report when the evidence is not immediately available. Note on the file what attempts you made to obtain this evidence, so that the CPO is aware that he or she must pursue the matter.

When the Governor in Council grants relief, written notice is issued to the CIC or visa office where the application was received. If a person arrives at a POE and claims that relief has been granted, you must verify this with the Rehabilitation Section at National Headquarters (tel.: 819-953-8374).

Because the standard of proof is *reasonable grounds to believe*, appropriate evidence for cases under **A19(1)(c.2)** includes:

- documentary evidence, testimony of the person concerned, witnesses, or newspaper clippings that detail the crime or conviction. Evidence showing that the person is inadmissible may be classified information reports or a certificate under A40.1. For these types of cases, you may contact Case Management Branch, Security Review, at National Headquarters (tel.: 819-994-6306).

- evidence that the Minister has not indicated that the admission of the person would not be detrimental to the national interest.

When the Minister grants relief, written notice is issued to the CIC or visa office that processed the application. If a person arrives at a POE and claims that relief has been granted, you must verify this with the Rehabilitation Section at National Headquarters (tel: 819-953-8374).

2.2.4. A19(1)(d)

Paragraph 19(1)(d) of the Act describes persons who there are reasonable grounds to believe will commit one or more offences punishable by way of indictment under any Act of Parliament, or will engage in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of any offence that may be punishable under any Act of Parliament by way of indictment.

Evidence that there are reasonable grounds to believe that the person seeking admission to Canada is described in this paragraph will usually take the form of security reports or an A40.1 certificate. For these types of cases, you may contact Case Management Branch, Security Review, at National Headquarters (tel.: 819-994-6306).

2.2.5. A19(1)(e)

The purpose of A19(1)(e) is to render inadmissible persons who there are reasonable grounds to believe will engage in any activity that constitutes a threat to security or who are members of an organization that there are reasonable grounds to believe will engage in such activities.

This provision is limited to possible future activities that constitute or would constitute a threat to security, such as acts of espionage or subversion against democratic government, institutions or processes as they are understood in Canada; instigation of subversion by force of any government; and terrorist acts.

In most cases security reports or certificates under A40.1 constitute evidence showing that a person is described in this paragraph. You should refer any cases of this nature to Case Management Branch, Security Review, at National Headquarters (tel.: 819-994-6306).

2.2.6. A19(1)(f)

Paragraph 19(1)(f) of the Act renders inadmissible those persons who there are reasonable grounds to believe have engaged in acts that could constitute a threat to security, such as acts of espionage or subversion against democratic government, institutions or processes as they are understood in Canada, or terrorism. It also includes persons who are or were members of an organization that there are reasonable grounds to believe is or was engaged in such activities.

If the Minister is satisfied that the admission of a person will not be detrimental to the national interest, an exception may be made to allow the person to come into Canada.

In most cases security reports or certificates under A40.1 constitute evidence showing that a person is described in this paragraph. The appropriate officer should refer any cases of this nature to Case Management Branch, Security Review, at National Headquarters (tel.: 819-994-6306).

2.2.7. A19(1)(g)

Paragraph 19(1)(g) of the Act refers to persons who there are reasonable grounds to believe will engage in acts of violence that would or might endanger the lives or safety of persons *in Canada*, or who are members of or are likely to participate in the unlawful activities of an organization that is likely to engage in such acts of violence.

In most cases security reports or certificates under A40.1 will constitute evidence showing that a person is described in this paragraph. You should advise Case Management Branch, Security Review, at National Headquarters of any cases of this nature (tel.: 819-994-6306).

2.2.8. A19(1)(h)

Paragraph 19(1)(h) of the Act refers to persons who, in the opinion of an adjudicator, are not genuine immigrants or visitors. The person concerned may fall within the class of inadmissible persons for one or the other of these reasons, but never both at the same time.

The paragraph is designed to allow for the exercise of some control over the illegal migration of persons who attempt to enter Canada as visitors, but who intend to remain here indefinitely. It also applies to persons who do not intend to settle permanently in Canada but seek admission as immigrants.

For a person to be described in this paragraph, you must form an opinion concerning the genuineness of their application for admission. An opinion is a decision based on a logical review of the facts. It is important that the logic of your opinion be such that the same set of facts would cause a like-minded reasonable individual to arrive at the same conclusion. Opinions are not based on whim or capriciousness, but on reasonable interpretation of the evidence.

During your interview you may wish to explore the following areas of interest:

- the person's reasons for coming, such as the purpose of the trip, and the person's interests in Canada, links with Canada, preparation for the trip, and knowledge of Canada
- the duration of the stay, such as the time requested, the reason, and the plans for the stay
- the person's resources, including financial resources, transport (the form of payment, whether there is a return ticket, and means of transportation during the stay), assistance in Canada, and a socio-economic profile of the person concerned
- the person's reasons for returning to his or her home country, such as economic reasons (employment, legal responsibilities), family reasons (family obligations, family status), and social and political reasons (military service, whether the person is sought by the police, and the political situation in the country of nationality or citizenship).

You should gather evidence to support an A19(1)(h) allegation very carefully. You must conduct a thorough and accurate examination of the person. The quality of your notes and evidence is crucial. Your case highlights should be very detailed to assist the CPO in preparing the case.

If you are to report a person under A19(1)(h), in practical terms you must gather evidence that:

- the person does not have the right to come into Canada, nor is he or she a permit-holder or a person seeking Convention refugee status

- the person is seeking to come into Canada
- the person was examined by an IO
- the person is or was seeking to come into Canada for a temporary purpose, and
- there are reasons to believe the person is not credible based on his or her demeanour, intentions, history, and the reasonableness of his or her story.

One way of establishing the elements in A19(1)(h) cases is to provide as much detail in the formal report as possible. One of the key elements of an A19(1)(h) report is the lack of credibility of the subject. It is important to make note of as many contradictory statements as possible. You should examine and record the person's intentions, with an explanation of why you do not believe the statements made.

In a great many of these cases there is little tangible evidence other than the statements made by the person concerned. Your report should state:

- if and how the person was evasive
- if the person provided contradictory statements, and what they were
- if the person could not remember details that are important to the story but does remember things that are irrelevant, and
- if the person's story is unreasonable, with the details.

You can outline in the report that the person was evasive by referring to the facts as follows:

I asked Mr. Jones three times during the examination who paid for his ticket to Canada and received a different reply each time. First his brother paid for the airfare, then his parents gave him the money and finally he admitted that he sold his stereo to obtain the money for the ticket.

You should also identify contradictions uncovered during the examination; for example:

Mr. Jones told me twice that he had never visited Canada previously. However, his passport indicates on page 23 that he was admitted to Canada as a visitor on March 3, 1991 at Blackpool, P.Q.

In the report you should also comment on the person's inability to recall details that are important and crucial to his story; for example:

Mr. Jones cannot indicate how he came to make the decision to come to Canada, though he can remember the details of his lengthy and varied employment history.

You should include an unreasonable story in the report to point out lack of credibility; for example:

Mr. Jones claims that he has always had a desire to visit Prince Rupert, B.C. dating back to his childhood. This, in my opinion, is not credible as he does not know where Prince Rupert is in relation to the whole of Canada. He believes Prince Rupert to be a farming community, when the city is actually a seaport with no agricultural economy at all. Furthermore, Mr. Jones claims that he does not have any friends or relatives in Prince Rupert or anywhere else in Canada.

You must provide sufficient evidence to put into doubt the sincerity of the person's intentions in coming to Canada. The report must address the questions of whether or not circumstances exist that would, in the normal

course of events, compel the subject to leave Canada. Furthermore, you must be able, if called upon to testify at an inquiry, to swear to the truth of every fact cited in the report.

Lack of a job or employment opportunities, little or no family outside Canada, or little or no personal possessions or obligations in the person's homeland, are all reasonable causes to develop the opinion that someone is unlikely to depart from Canada. It is evidence of the person's lack of credibility when the person has said that he or she is going to visit for a limited period of time, and evidence that there is nothing requiring him or her to leave Canada, that will support the position that the person is not a genuine visitor. In essence, all the various statements should lead to a convincing argument that the person is described under A19(1)(h).

When you conduct an interview relating to A19(1)(h), the department suggests that you follow this format:

- **purpose of trip:** Why are you coming to Canada at this time?
- **interest in Canada:** What brings you to Canada at this time (tourism, business, study, medical care or other)?
- **contacts in Canada:**
 - Who invited you (family, friend, or other)?
 - What is the relationship?
 - How are you going to get to your destination?
 - How was the invitation made (by letter, telephone, facsimile or telex)?
- **trip preparation:**
 - Has your trip been planned for a long time, or did you decide to come on short notice?
 - Have you made previous contact with Canadian officials overseas (high commission, embassy or consulate)?
 - Have you obtained tourist information concerning Canada?
 - Have you been to Canada previously?
 - What is the cost of the trip in relationship to your standard of living?
 - Who paid for the trip?
- **knowledge of Canada:** Do you know anything about where you are going (geographical, political, cultural, social or meteorological knowledge)?

2.2.9. A19(1)(i)

Paragraph 19(1)(i) of the Act refers to persons seeking admission to Canada without obtaining the consent of the Minister under A55(1) (deportation order) and A55(2) (exclusion order). This paragraph does not apply to a person who has claimed to be a Convention refugee and was subsequently ordered excluded [A55(2)].

Evidence demonstrating inadmissibility under this paragraph would include:

- evidence that the person concerned has been ordered excluded, deported, or has received a departure notice or order under this Act or any earlier *Immigration Act*. (If the person concerned does not comply

with a departure notice before February 1, 1993, the departure notice may be deemed to be a deportation order on the later of the expiration of 90 days after the day s. 113 of the Transitional Provisions of the Immigration Act (as amended by Bill C-86) comes into force, or the period specified in the departure notice for the person to leave Canada.) For further guidance see OM IE 93-16 modification dated July 15, 1993.

To provide this evidence, you should obtain a certified true copy of the removal order.

and

- evidence in the form of either an admission by the person concerned or the decision of the Immigration Appeal Division that no appeal against the removal order has been allowed.

and

- evidence that the person concerned has been removed or has left Canada. *(The courts have held that the voluntary departure of a person who is the subject of a deportation order could only be made under s. 54 of the Act (now A52) with the permission of the Minister. In the absence of such permission, the person could not be said to have carried out the removal order himself or herself [Mercier v. Minister of Employment and Immigration, FCTD, Doc. No. T-1512-85, November 17, 1986].)*

or

evidence that, in the case of a person who has been issued a departure order, the person has not left Canada voluntarily (or has not been issued a certificate under A32.01) within the applicable period specified in the Immigration regulations for the purposes of A32.02(1). *(If the person concerned was under a departure order and was in detention before the date of expiration of the order, you must bring forward evidence that the person was not in detention on the expiry date of the order.)*

The appropriate officer can establish either of these alternatives through an admission of the person concerned or by obtaining a true copy of the notice of confirmation of departure.

and

- an admission by the subject or a document or telex from national headquarters stating that there is no indication that the Minister authorized the person concerned to return to Canada.
- in the case of a person excluded under the Act, evidence that less than 12 months have elapsed between the day following the day on which the person left Canada and the date that the person again seeks admission. Officers should note, however, that *at the time of the adjudicator's decision* the individual must be a member of an inadmissible class, and therefore action under this paragraph must have commenced and been terminated with an adjudicator's decision within the 12-month period [*Hamek Singh Grewal v. Minister of Employment and Immigration, FCA, Doc. No. A-42-80, May 7, 1980*].

If a person has been previously deported for criminality and is still inadmissible by reason of those same grounds, you must report the person for those grounds *and* A19(1)(i) and any new grounds of inadmissibility.

2.2.10. A19(1)(j)

Paragraph 19(1)(j) of the Act refers to persons who there are reasonable grounds to believe have committed an act or omission *outside Canada* that constituted a war crime or a crime against humanity within the meaning of s. 7(3.76) of the *Criminal Code* that would have constituted an offence against the laws of Canada *in force at the time of the act or omission*.

Subsection 7(3.76) of the *Criminal Code* defines war crimes and crimes against humanity as follows:

“War crimes”: means an act or omission that is committed during an international armed conflict, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission, and that, at that time and in that place, constitutes a contravention of the customary international law or conventional international law applicable in international armed conflicts.

“Crime against humanity”: means murder, extermination, enslavement, deportation, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group of persons, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission, and that, at that time and in that place, constitutes a contravention of customary international law or conventional international law or is criminal according to the general principles of law recognized by the community of nations.

Evidence that would lead an adjudicator to conclude that a person is described in A19(1)(j) would generally take the form of security reports or a certificate issued under A40.1. For these types of cases, you should contact Case Management Branch, Security Review, at National Headquarters (tel.: 819-994-6306).

Evidence that may help to establish inadmissibility under this paragraph includes:

- a certificate under A40.1 for the person concerned
- documentary evidence or testimony establishing that the person concerned was convicted of an offence outside of Canada, referred to or equivalent to s. 7(3.76) of the *Criminal Code*, and
- an admission by the person concerned or any other credible and trustworthy evidence that he or she committed an offence referred to in s. 7(3.76) of the *Criminal Code*.

2.2.11. A19(1)(k)

Paragraph 19(1)(k) of the Act refers to persons who constitute a danger to the security of Canada, but who are not members of a class described in A19(1)(e), A19(1)(f) or A19(1)(g).

When a person is the subject of an inquiry, written certification from the Minister and the Solicitor General of Canada must be issued in accordance with A40 or A40.1, depending on the status of the person concerned. For a case of this nature, officers should contact Case Management Branch, Security Review, at National Headquarters (tel.: 819-994-6306).

2.2.12. A19(1)(l)

Paragraph 19(1)(l) of the Act refers to persons who are or were senior members or senior officials in the service of a government that in the opinion of the Minister is or was engaged in terrorism, systematic or gross

human rights violations or war crimes or crimes against humanity within the meaning of s. 7(3.76) of the *Criminal Code*. This paragraph concerns persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power. At the present time the Minister has designated the following governments as being described in A19(1)(l):

- the Bosnian Serbian government;
- the Somali government of Siad Barre (from 1969 to 1991);
- the Duvalier and military regimes in Haiti during the following periods: (1) January 1971 to February 1986; (2) October 1991 to August 1993 and (3) December 1993 to April 1994;
- the former Marxist government of Afghanistan (1978–1992)

While the Minister has sole authority to determine whether a government is covered under paragraph A19(1)(l), paragraph A19(1)(1.1) gives a complete description of those senior officials who are inadmissible under this section. Consequently, an immigration officer (IO) who feels that there is sufficient grounds to support this allegation can report the person using A19(1)(l). In cases where an IO is unsure, he or she can seek assistance from the appropriate section of the Case Management Branch, NHQ: Bosnia and Somalia – Chief, Europe (819–994–6292); Haiti – Chief, Western Hemisphere (819–997–0612); Afghanistan – Chief, Asia and Pacific (819–953–0384). Likewise, if an IO is of the opinion that a person is or was a senior member of a government which is not determined by the Minister to be covered under A19(1)(l) but should be, the case can be submitted to the Case Management Branch for review. They will then decide if the case can be submitted to the Minister for inclusion in A19(1)(l).

Generally in this type of case security reports from various police or intelligence agencies will serve as evidence. An A40.1 certificate could be issued in these circumstances and would serve as evidence that the person concerned was described in the allegations.

Where the Minister is satisfied that the entry of these persons would not be detrimental to the national interest, they may be allowed to enter.

2.2.13 A19(2)(a) and 19(2)(a.1)

- a) Paragraph 19(2)(a) of the Act refers to persons who have been convicted *in Canada* of an indictable offence, or of an offence for which the offender may be prosecuted by indictment or for which the offender is punishable on summary conviction, that may be punishable by way of indictment under any Act of Parliament by a maximum term of imprisonment of less than ten years.
- b) Paragraph 19(2)(a.1) of the Act refers to persons who there are reasonable grounds to believe have been convicted *outside Canada* of an offence, or have committed an act or omission that constitutes an offence under the laws of the place where the act or omission occurred, and that, if committed in Canada, would constitute an offence that may be punishable by way of indictment under any Act of Parliament by a maximum term of imprisonment of less than ten years.

Persons described in A19(2)(a.1) can request that an exception be made in their case. They have to satisfy the Minister that they have rehabilitated themselves and that at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be. Changes to this section of the *Immigration*

Act, as amended, have made case law such as *Kai Lee* inoperable [*Kai Lee v. Minister of Employment and Immigration*, FCA, Doc. No. A-11-79, June 20, 1979].

To demonstrate inadmissibility under A19(2)(a), the appropriate officer should obtain the following evidence:

- for an A19(2)(a.1)(i) case, evidence of a certificate of conviction. For further information on establishing inadmissibility, see section 2.2.3 above concerning A19(1)(c), A19(1)(c.1) and A19(1)(c.2).
- for an A19(2)(a.1)(ii) case, evidence that constitutes reasonable grounds to believe that the person concerned committed an act or omission outside of Canada. Evidence of this nature may well take the form of security or police reports that demonstrate the allegation. For a case of this nature, you should contact Case Management Branch, Security Review, at National Headquarters (tel.: 819-994-6306).
- the text of the foreign legislation (in the case of an offence committed abroad), and the text of the Canadian legislation, to establish equivalence and to prove that the offence is punishable under an Act of Parliament by way of indictment and may be punishable by imprisonment for a maximum term of less than ten years.
- for offences committed abroad only, evidence that the person concerned has not satisfied the Minister concerning rehabilitation and that five years have not passed since the expiration of any sentence imposed or since the commission of the act or omission, as the case may be.

You must not delay completing the report when the evidence is not readily available. Note on the file what attempts you made to obtain this evidence, so that the CPO is aware that he or she must pursue the matter.

When the Minister grants relief, written notice is issued to the CIC or visa office that processed the application. If a person arrives at a POE and claims that relief has been granted, you must verify this with the Rehabilitation Section at National Headquarters (tel.: 819-953-8374).

For delegation of authority to grant approval of rehabilitation at ports of entry, see APPENDIX H.

2.2.14 A19(2)(b)

Paragraph 19(2)(b) of the Act refers to persons who have committed minor but repeated offences and have been convicted in Canada or abroad, but does not include acts or omissions. The Act no longer makes a distinction on the basis of age. Paragraph 19(2)(b) covers two categories of persons:

- Persons who have been convicted *in Canada* under any Act of Parliament of two or more summary conviction offences not arising out of a single occurrence, where any part of the sentences imposed for the offences was served or to be served at any time during the five-year period immediately preceding the day on which they seek admission to Canada.
- Persons who there are reasonable grounds to believe have been convicted *outside of Canada* of two or more offences, not arising out of a single occurrence, that if committed in Canada would constitute summary conviction offences under any Act of Parliament, where any part of the sentences imposed for the offences was served or to be served at any time during the five-year period immediately preceding the day on which they seek admission to Canada.

2.2.15. A19(2)(c)

You should obtain the following evidence:

- evidence that the person concerned has been convicted on at least two occasions of summary conviction offences, such as the information, conviction certificate or admission of the person concerned
- in 19(2)(b)(i) cases, the text of the Canadian legislation
- in 19(2)(b)(ii) cases, the text of the foreign legislation in the case of an offence committed abroad and the equivalent Canadian legislation
- evidence that the convictions do not arise from the same occurrence
- evidence that all or part of each sentence imposed has been served or was to have been served in the five years immediately preceding the date of the request for admission.

Paragraph 19(2)(c) of the Act is meant to be used for persons accompanying a family member who is inadmissible.

For a person to be declared inadmissible under A19(2)(c), you must establish in evidence that the person is a member of a "family" as defined in the Act or in s. 2(2) of the *Immigration Regulations*, and in the case of visitors, that the family member is dependent on the person concerned. Usually this evidence will take the form of a statutory declaration given by the family members and the head of the family about the relationship and dependence. In some cases you may corroborate the relationship by information shown in the passport or travel documents.

2.2.16. A19(2)(d)

Paragraph 19(2)(d) of the Act applies primarily to persons who do not satisfy the conditions imposed by the Act or its regulations: for example, the fact that they do not have a visa, passport or have not undergone medical examination. This provision should not be dissociated from the other sections of the Act and regulations. It should not be relied upon if there is a more specific ground of inadmissibility. For example, a deported person who seeks admission without the Minister's permission is inadmissible under A19(1)(i), and not A19(2)(d) and A55.

The type of evidence necessary will depend on the actual allegation.

2.2.17. A19(2)(d) for A9(1) and A24(1)

Paragraph 19(2)(d) of the Act for A9(1) and A24(1) applies to persons who remain outside Canada with the intention of abandoning Canada as their place of permanent residence.

A permanent resident of Canada who is abroad for more than 183 days is deemed to have abandoned Canada as his or her place of permanent residence, unless the person satisfies an IO or an adjudicator (as the case may be) that he or she did not intend to abandon Canada as the place of permanent residence. Two elements must be present to conclude that a person is deemed to have abandoned Canada as the place of permanent residence:

- the physical presence outside of Canada of the person concerned, and
- the intention to live outside of Canada permanently.

The possession of a valid returning resident permit, described under A25 of the *Immigration Act*, establishes proof in the absence of evidence to the contrary that the person did not leave or remain outside Canada with the intention of abandoning Canada as the person's place of permanent residence.

In examining loss of residence, you may take the following into account:

- details about obtaining landing, such as the immigrant record, application for returning resident permit and record of renunciation of permanent residence (abandonment)
- links with Canada, such as employment, property (house, land, car and so forth), funds (bank account), family, and whether these links were maintained during the absence
- circumstances surrounding the departure, such as the date, reason, destination, period spent outside Canada, and intention upon leaving
- links with a foreign country, such as employment, property, funds and family
- any extenuating circumstances in a case of lengthy absence, such as professional obligations, professional promotion or education, war or sickness, and
- the reasons for returning to Canada, such as family ties and employment.

For further information on determining the loss of permanent residence status, see chapter PE 3, *Examining Canadian Citizens, Registered Indians, Returning Residents, and Minister's Permit Holders*.

2.2.18. A19(2)(d) for R14(6)

Under R14(6), visitors may be required to produce sufficient **documentary evidence** to establish to the satisfaction of an immigration officer that they will be able (a) to return to **the** country from which they seek entry **OR** (b) to go from Canada to **some other** country.

What is documentary evidence? A document has traditionally been defined as 'any writing or printing capable of being made evidence, no matter on what material it may be inscribed'. Based on this definition, a passport, a visa, an airplane ticket, money or a statement of a person's bank assets can certainly be considered documentary evidence.

What documentary evidence are visitors required to produce in order to meet the criteria in R14(6)? Visitors must meet at least one of the two criteria set out in R14(6). In order to do so, they should be in possession of: (a) a valid passport or other travel document accepted by **the** country from which they seek entry or by **some other** country to which they intend to travel, (b) a valid visa, in case an application for admission into **the** or **some other** country is made, if that country requires a valid visa, and (c) any other documentary evidence **the** or **some other** country is entitled to require from them.

When a country requires visitors to have a valid visa to return or travel there, it is not necessary to write a report pursuant to R14(6) simply because they seek entry to Canada for a period that extends beyond the expiry date of that visa. The officer could counsel a visitor and decide to admit for a period that ends on the date the visa in question expires or for a shorter period. It should be remembered that R14(6) does not require visitors to show that they will be admitted to **the** or **some other** country, but rather that they have the documentary evidence needed to either **return** or **to go** there.

Visitors who have a passport to go from Canada to some other country but do not have an airplane ticket to leave Canada? Visitors must also be able to establish to the satisfaction of an IO that they are **in fact** able to leave Canada. Normally, all they need to do is produce an airplane ticket or the

money to buy one. That being said, an IO should not necessarily and automatically decide that a visitor is in the wrong simply because he or she does not have an airplane ticket or the money to buy one. For example, during their authorized stay in the United States, visitors often decide to visit Canada for a couple of days. In such cases, visitors may not be in possession of a return ticket to their country of origin or the necessary funds to buy one, because they have left them with their relatives or friends in the United States. All the relevant facts of each case should therefore be carefully examined.

How can visitors establish to my satisfaction that they are in fact able to leave Canada? You should exercise judgment in each case by checking to make sure that the visitor is able to obtain a return ticket. For example, you could get a letter from a relative agreeing to provide a ticket, a ticket left in the United States could be sent by priority courier, you could ask for confirmation from a travel agency that a ticket has indeed been issued, etc.

What do I do if a visitor fails to establish to my satisfaction that he or she is in fact able to leave Canada? In such instances, you may be justified in writing an A20(1) report pursuant to R14(6). That being said, since there is doubt as to whether the visitor will be in Canada temporarily, it would not be out of line to try to determine whether there are any other factors that would warrant an A20(1) report pursuant to A19(1)(h). Other aspects of the visitor's travel plans may be questionable enough to undermine the visitor's credibility.

In closing, we should point out that what can be deemed to be "sufficient documentary evidence" according to R14(6) can vary from case to case depending on the specific circumstances. You should not impose a restrictive definition on what can be considered "sufficient documentary evidence", but rather use your judgment in each case.

2.2.19. Young offenders

You should get the consent of your manager before taking any action against a young person.

Under the *Young Offenders Act*, a young person is a person who is, or in the absence of evidence to the contrary appears to be, 12 years of age or more but less than 18 years of age. Under the *Young Offenders Act*, an offence is defined as an offence created by an Act of Parliament or by any regulation, rule, order, by-law or ordinance made under an Act, other than an ordinance of the Yukon Territory or the Northwest Territories.

If a young offender has been convicted in youth court, it does not constitute a conviction for the purposes of the *Immigration Act*. If the case was transferred to adult court it does constitute a conviction for the purpose of the *Immigration Act*.

When you are determining equivalences between foreign and Canadian law concerning young persons, you need to consider the following:

- a) If the foreign jurisdiction has a procedure for dealing with young persons and the person has been dealt with under those provision then you would consider them as a young offender in Canada and they would not be reportable;
- b) If the foreign jurisdiction has a procedure for dealing with young persons and the person was dealt with as an adult then you would consider the person as having been convicted for the purposes of the *Immigration Act* and s. 553 of the *Criminal Code*;

2.2.20. Documentary evidence for
criminal equivalence and
pardons

- c) If the foreign jurisdiction does not have a procedure for dealing with young persons then you will consider them convicted under the *Young Offenders Act*.

Should a young offender who is facing charges seek entry to Canada you will conclude, unless there is evidence to the contrary, that the matter will be dealt with under a foreign equivalent of the *Young Offenders Act* and therefore the person is admissible to Canada. The exception to the rule is if the offence has been transferred to an adult court to be heard. Consequently the client may be dealt with pursuant to the Acts and Omissions provisions.

Under the *Young Offenders Act*, a child is defined as a person who is, or in the absence of evidence to the contrary appears to be, under the age of 12 years. A child is not held criminally responsible in Canada.

You must examine the details of a conviction obtained abroad to establish its equivalence to Canadian law. The method prescribed by the courts for determining equivalence is outlined in APPENDIX B. The appropriate officer will need to obtain these documents:

- evidence of the conviction, such as a certificate of conviction, a police report or a statutory declaration outlining a telephone conversation with a police officer, court reporter, or court records clerk
- the legal description of the foreign offence: that is, the text of the statutory provision under which the person was convicted, and
- evidence (obtained from the charge or indictment or a similar document) of the particulars of the offence. In some cases, the certificate of conviction may contain sufficient information for the certificate to be used instead of the indictment [*Branson v. Minister of Employment and Immigration*, FCA, Doc. No. A-213-80, April 12, 1980].

APPENDIX B discusses case law on documentary evidence necessary to prove criminal equivalence.

The fact that a person has been granted a pardon in another country does not necessarily affect that person's admissibility to Canada. In general, if a pardon recognized that the person concerned was convicted in error and should not have been convicted, the foreign pardon may be equivalent to a Canadian pardon. If it was granted for rehabilitation, however, the pardon will not effectively make the person admissible. APPENDIX B includes a discussion of pardons.

3. OPTIONS TO GRANTING ADMISSION

If you are of the opinion that it would be contrary to the Act or its regulations to grant admission to a person or otherwise let that person come into Canada, you must:

- report the person in writing to an SIO [A20(1)(a)], or in the case of a person who is arriving from the U.S., direct that person to return to the U.S. when an SIO is not readily available [A20(2)], or
- allow that person to leave Canada forthwith [A20(1)(b)].

4. VOLUNTARY WITHDRAWAL

Before writing a report under A20(1) you should consider allowing the person the opportunity to leave Canada voluntarily.

4.1 Using discretionary authority

Paragraph 20(1)(b) of the Act gives you the discretionary authority to allow a person to leave Canada, rather than to submit a report under A20(1)(a). If you do not wish to exercise this authority, an SIO may exercise the authority under A23(4) and A23(4.2)(b). You or an SIO cannot delegate the discretionary authority to another person, nor can another person oblige you to exercise or not to exercise discretion.

You must make the decision to offer voluntary withdrawal on a case-by-case basis. You should offer the person the option of voluntary withdrawal under A20(1)(b) unless you have reason to believe that such action would be inappropriate. This paragraph gives you an administrative way to allow persons to leave who may be inadmissible solely on technical grounds, such as not having a visa.

These guidelines are not strict rules, nor will they cover all situations. They are intended to help you determine the types of cases where the discretionary authority of A20(1)(b) would or would not be appropriate. You must consider the seriousness of the inadmissibility when you determine whether you should allow voluntary withdrawal.

4.2 Factors to consider in allowing voluntary withdrawal

You should take the following factors into consideration when you are making a decision to allow voluntary withdrawal:

- are there humanitarian or other pressing considerations which may suggest that inquiry action would be inappropriate?
- is the request for admission spontaneous, and did the person make any attempt to misrepresent the facts to gain admission to Canada?
- has the person previously contravened the Act?

If you are in doubt about offering voluntary withdrawal, you should submit a report for review by an SIO, who also has the authority to allow a person to withdraw [A23(4) and A23(4.2)(b)].

You should bear in mind that the Act does not provide for the detention of persons who have been allowed to leave Canada under A20(1)(b), A23(4) or A23(4.2)(b) or who have been issued a rejection order under A13.

Your detention authority under A20(1) does not extend to situations where you allow a person to leave Canada. Subsections 23(6) and 103(7) of the Act are very clear as to who can be detained and for what purpose. A23(6) states that:

- no person shall be detained or ordered detained under A23(3)(a), and
- any person detained under A20(1) shall be released from detention by a SIO unless there are reasonable grounds to believe that the person *poses a danger to the public or would not appear for an examination or inquiry.*

4.3 Situations where voluntary withdrawal would be inappropriate

An SIO must review any detention under A20(1), and the SIO must release the person unless there are reasonable grounds to believe that the person poses a danger to the public or would not appear for an examination or inquiry. Subsection 103(7) of the Act also requires that an adjudicator release a person unless the person poses a danger to the public or would not appear for examination, removal or inquiry.

Given the restrictions on detention, it would appear that a person should only be allowed to leave Canada if you are of the opinion that the person will leave forthwith and he or she does not constitute a danger to the public. If it appears that the person will not be able to leave Canada forthwith (and a long wait for transportation may indicate that this is the case) then you should consider writing a report.

Once an inquiry has been caused, A23(3)(a) allows detention pending inquiry. In these circumstances, withdrawal before inquiry may be allowed by either the SIO or CPO. Once an exclusion order has been issued, detention may be ordered under A103(3.1)(b).

In certain situations voluntary withdrawal would be inappropriate:

- where you have determined that the person concerned may be inadmissible on serious grounds (that is, grounds involving public security or health), and it may be useful to have the person's inadmissibility officially recorded in a deportation order.
- where you have reason to believe that the person may seek to gain admission to Canada through other POEs following his or her withdrawal. This does not mean that you should report a person whom you allow to leave for lack of identification — or other reasons that can be readily corrected — because he or she might turn up at a POE down the road. Common sense should prevail.
- where there are other valid reasons for entering the person concerned into the Field Operations Support System (FOSS).

4.4 Counselling for withdrawal

If you allow the person to withdraw voluntarily, you must counsel him or her as follows:

- inform the person why you believe that he or she is inadmissible
- tell the person that if he or she withdraws the application for admission, he or she is free to return to Canada once the factor causing inadmissibility has been overcome
- if the prohibition is the result of a criminal conviction, instruct the person on how to seek a pardon if the conviction took place in Canada (see APPENDIX B), or to apply at a Canadian consulate or embassy for evidence of rehabilitation if the conviction took place abroad
- if the person is eligible for A19(3) entry, counsel him or her on this option, including cost recovery (see APPENDIX C; for further information see chapter PE 10, *Senior Immigration Officer Functions at Ports of Entry*), and
- inform the person of the possible consequences of proceeding with the application for admission, including the possibility of an inquiry and a removal order.

4.5 Issuing an IMM 1282

When you decide to allow a person to leave Canada, you must issue the person with an Allowed to Leave Canada form (IMM 1282; see APPENDIX D), so that the person can present it to an IO of the country of return. You must use the version of the form generated by FOSS. If FOSS is not available, complete the form by hand and make a *status entry* in FOSS when it becomes available. Ensure that the person signs the form in order to indicate in writing his or her desire to leave Canada voluntarily.

5. WRITING A20 REPORTS

You normally write an A20 report using *full-document entry* in FOSS. You must take care to avoid legal errors, because the written report may be subjected to close scrutiny by the SIO, supervisor, manager, CPO, adjudicator and legal counsel, among others. When you use FOSS, take care in selecting the proper codes, especially when more than one code may apply.

You should substantiate the report with evidence to establish the allegation. Even though the burden of proof rests on the person concerned, the department must establish the grounds for the report. You should consider the following questions:

- What did you use as the basis for your decision to report the person?
- Did the person admit to a criminal conviction?
- If so, will he or she sign a declaration admitting to it? If not, you should prepare a statutory declaration.
- Are police reports or certificates of conviction available?

You should make good notes, in case you are called to testify at the person's inquiry.

5.1 Entering A20 reports in FOSS

For detailed instructions on how to use FOSS, you should refer to the *Field Operations Support System Users' Manual*. For general instructions on how to complete Enforcement Data System documents in FOSS, see the *Immigration Data Manual* (ID Manual). For instructions on completing an A20 report (IMM 1093), see section 5.11 of the ID Manual.

When you enter an A20 report into FOSS, you should use either *full-document entry* (FDE) or *status entry*. If you use FDE there are three screens to be completed.

You can complete nearly all the fields in the A20 report with the numeric codes or abbreviations found in the *Immigration Coding Handbook* (IH Manual).

The FOSS *Help* screens can assist you in determining which code or data field is required without having to look in the manual. To sign on to the *Help* screen, regardless of which type of terminal you use, you must first call up a blank screen by using the NEXT, BACK OR CONTROL (CTRL) sequences. On most microcomputers you use either the ESC and \$ key sequence, or ESC and . . Once you have a blank page, position the cursor at the top left corner of the screen. Type the word *HELP* and then *XMIT*. The system will present the *Help Menu* screen.

Remember that when you enter the SIO disposition for the A20 report into FOSS, you must send a first copy of the FDE-generated report or copy 2 of the IMM 1093 to the FOSS Division at National Headquarters to be microfilmed.

When FOSS is unavailable, complete the IMM 1093 manually and then add the information to the system through *status entry*.

5.2 Counselling

Before you refer the case to an SIO, you should counsel the person on:

- why you wrote the report.

5.3 Referring reports to an SIO

- the date and time the person should return, if an SIO is not available. If the review is to be conducted at a POE other than the one where you completed the report, give the person appropriate instructions, such as where the office is located and how to get there.
- the purpose of the review and the options that are available to the SIO.
- if the person is eligible for A19(3) entry, counsel him or her on this option, including cost recovery. Tell the person that he or she must pay the fee for the SIO to consider A19(3) entry, and that payment of the fee does not guarantee entry. For information on A19(3) consideration and the appropriate cost recovery, see APPENDIX C.

When you finish the report, you must refer the case to an SIO for review. Because an SIO will normally be readily available to receive reports under A20, the SIO should review the case of a person detained under A20 as soon as possible, and in any event not later than four hours from the time you write your report, unless A20(2) applies.

6. DIRECTING PERSONS BACK TO THE U.S.

If the person concerned is arriving from the U.S., and if an SIO is not available to conduct the review, you have the option of directing the individual to return to the U.S. until such time as the SIO is available [A20(2)]. You normally use this option only at a land border; in such a case the Act does not require that you write an A20 report before issuing a Direction to Return to the United States (under Subsection 20(2) of the *Immigration Act*) (form IMM 1237; see APPENDIX E).

If you decide to use the direct-back option, you should:

- counsel the person on the same points as in section 5.2 above
- arrange an appropriate time and place for the person to return
- complete an IMM 1237, which may be generated by FOSS; if FOSS is not available, complete the form by hand and make a *status entry* in FOSS as soon as possible when it becomes available
- give the person a copy of the IMM 1237
- complete a Notice of Liability to Pay Removal/Detention Costs (form IMM 1216; see APPENDIX F), and
- provide the transportation company with copies of the IMM 1216 and IMM 1237, and arrange for compliance.

APPENDIX A

REQUESTING MINISTER'S OPINIONS AND SECURITY CERTIFICATES

The security review procedures in the Act allow the government to fulfil its duty to remove permanent residents and temporary entrants who are a threat to national security or whose presence endangers the lives or safety of persons in Canada. A determination that a person is inadmissible for these reasons cannot be made without the opinion of the Minister and the Solicitor General [A39(2), A40.1, and A81(2)].

Where a permanent resident is to be removed from Canada on these grounds, the Ministers' opinion must be reviewed by the Review Committee of the Canadian Security Intelligence Service and confirmed by the Governor in Council [A40(1)]. If the person is a person other than a Canadian citizen or a permanent resident, the Ministers' opinion must be reviewed by the Federal Court [A40.1(3)]. Should the Ministers' opinion be confirmed by the Governor in Council or upheld by the Federal Court, as appropriate, the Act provides for the expeditious removal of the person concerned with the issuance of a security certificate.

The new security review procedures recognize the need to co-operate with foreign governments and intelligence agencies to maintain national security. The Act includes provisions to protect the disclosure of information obtained in confidence from foreign governments or intelligence organizations. The court can examine the information in camera, and in the absence of the person to be removed or his or her counsel [A40.1(5.1)(b)(i)]. Counsel for the government is allowed a reasonable opportunity to make submissions that the information is relevant but should not be disclosed to the person for reasons related to national security or the safety of persons [A40.1(5.1)(b)(ii)]. If the court is not prepared to accept the submissions, the information is returned to counsel for the government [A40.1(5.1)(c)]. The court then proceeds with the determination on the basis of whatever other information is submitted by counsel, and cannot consider the protected information [A40.1(5.1)(c)(i)].

If the court decides in favour of the government, and the information is presented to the adjudicator in removal proceedings, the adjudicator does not have the jurisdiction to call into question the constitutionality of the review proceedings. All constitutional issues would, instead, have to be decided by a court of law [A40.2].

A request for a Minister's opinion or a security certificate may be made in the following situations:

- **refugee claimants:** the purpose of A46.01(1)(e)(i) and A46.01(1)(e)(ii) is to exclude from the refugee determination process persons convicted of serious crimes or other undesirables to whom Canada has no legal obligation under the 1951 *Convention* and the 1967 *Protocol*. The Minister's opinion on whether a person convicted of serious crimes poses a danger to the public [A46.01(1)(e)(i)] or whether it is contrary to the public interest to hear the claim in Canada [A46.01(1)(e)(ii)] is required to exclude persons from our refugee determination system. For further information on requests for a Minister's opinion, see APPENDIX C of chapter PE 10, *Senior Immigration Officer Functions at Ports of Entry*.
- **permanent residents:** the purpose of A40(1) certificates is quickly to remove permanent residents who are described in A19(1)(c.2), A19(1)(d)(ii), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(k) or A19(1)(l), A27(1)(a.1), A27(1)(a.3)(ii), or A27(1)(g) or A27(1)(h).
- **persons other than permanent residents and Canadian citizens:** the purpose of A40.1 certificates is quickly to remove persons other than Canadian citizens or permanent residents who are described in A19(1)(c.1)(ii), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l) or A19(2)(a.1)(ii).
- **persons with the right to appeal to the IAD:** The purpose of A82 certificates is to prevent permanent residents described in A19(1)(c.2), A19(1)(d)(ii), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(k), or A19(1)(l), or A27(1)(a.1), A27(1)(a.3)(iii) or A27(1)(g) or A27(1)(h), or any other case described in A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l) access to appeal a removal order to the IAD.

You may be called on to initiate a request for a Minister's opinion [A46.01(1)(e)(i) or A46.01(1)(e)(ii)] or a security certificate [A40(1), A40.1, or A82]. The supporting evidence may include, as appropriate:

- a conviction certificate
- warrant of committal
- reasons for conviction or sentence to confirm a conviction
- records of mental illness
- Health and Welfare Canada medical reports
- psychiatric evaluations or certificates
- police reports, and
- any data concerning incidents of physical violence showing that the person could be a danger to the public or a danger to the security of Canada.

All cases involving security reports and requests for certificates should be referred to Security Review, Case Management Branch, National Headquarters (tel: 819-994-6306).

For further information on evidence requirements, see section 2.2 of this chapter.

APPENDIX B

CRIMINAL EQUIVALENCE AND PARDONS

1. CRIMINAL EQUIVALENCES

The documentary evidence necessary in your case may involve your obtaining details of a conviction obtained abroad to establish its equivalence to Canadian law. The Federal Court has prescribed methods for determining equivalence in three leading cases, discussed in the following sections.

1.1 *Brannson*

The adjudicator ordered Mr. Brannson's removal because he was a person described in A27(2)(a) in that, if he were applying for entry to Canada, he would not have been granted entry by reason of his being a member of an inadmissible class of persons described in A19(2)(a). In *Brannson* [*Brannson v. Minister of Employment and Immigration*, FCA, Doc. No. A-213-80, April 12, 1980], the court set the deportation order aside and referred the matter back to an adjudicator for the resumption of the inquiry.

Mr. Brannson was reported for having been convicted in the United States of mail fraud. The adjudicator found that the offence of which he was convicted, as revealed by the terms of the judgement and probation commitment order, would have been an offence under s. 339 of the *Criminal Code* had it been committed in Canada. The court disagreed with the adjudicator's finding because the Canadian offence relates to mailing letters and circulars, whereas the U.S. offence is broader and refers to mailing any matter or thing. In other words, someone could not be convicted of the Canadian offence in question if the materials transmitted or delivered were neither letters or circulars. No evidence was introduced at the inquiry as to what Mr. Brannson had mailed, although he did provide some information as to the circumstances of the offence.

The court decided that these documents should have been introduced in evidence:

- evidence of conviction (this may take the form of a certificate of conviction, a police report, or a report of a telephone conversation with the police or a court reporter)
- the legal description of the foreign offence (the text of the statutory provision under which the person was convicted), and
- evidence of the particulars of the offence, such as the charge, indictment, or similar document. In some cases, the certificate of conviction may contain sufficient information for the certificate to be used instead of the indictment.

The court laid out the following process:

- You should examine the certificate of conviction or a similar document to determine the offence for which the person was convicted. A certificate of conviction is particularly important if the person concerned was charged with one offence and convicted of another. This will usually occur where a person is charged with a serious offence but, as a result of plea bargaining, is convicted of a lesser offence. The offence that you must look at is the one of which the person concerned was actually convicted. In this case, the certificate of conviction showed that Mr. Brannson was convicted of an offence under 18 USC 1341.
- You should study the provisions describing the foreign offence to determine its essential elements. Merely looking at the name of the offence is not sufficient.
- Having determined the elements of the foreign offence, you should examine the relevant provisions in our legislation to see whether there is an equivalent offence. The essential elements of each offence must be compared to determine that they correspond. Although the elements of the foreign and Canadian offences need not be strictly identical, the elements of the Canadian offence have to be such as to include within them the elements of the foreign offence. If, for example, a foreign offence were narrower than a Canadian offence, the wider Canadian offence would, nonetheless, be equivalent to the foreign offence. The court realized that there will be differences in the wording of statutory provisions in different countries and, in seeking to determine the Canadian equivalent, you must bear in mind that the language of the two provisions need not be the same.

- If the foreign offence is broader than the Canadian offence, you must examine the indictment or a similar document to determine whether the particulars of the offence fall within the Canadian offence. If the particulars narrow the offence committed in such a manner as to bring it within the legal definition of the Canadian offence in question, then there is an equivalence. If the circumstances are such that the foreign offence committed falls outside the legal description of the Canadian offence one is looking at, the two sections should not be equivalent. One should then look elsewhere to see if there is an equivalent.

In the *Brannson* case, the sequence should have been:

- determine that the foreign offence included mailing any matter, whereas the Canadian one referred to the mailing of letters and circulars only
- see if what was mailed fell within the Canadian offence, and
- if the material mailed was a letter, then there would be an equivalency

The court mentioned two possible exceptions to the requirement of producing evidence of relevant foreign law, conviction and charge:

- where the conviction is with respect to an offence that is *malum in se* (that is, an offence against moral law which is of such a character as to be an offence in all countries, such as murder or theft). In such cases, you would presume the law in the foreign country to be the same as in Canada. However, you should rely on this exception only in the clearest of cases. For example, manslaughter appears to be a *malum in se* offence, but in some American jurisdictions manslaughter has little resemblance to manslaughter as we understand it in Canada.
- in non-common law countries, the methods whereby prosecutions are instituted may be substantially different from those generally prevailing in common law countries. Therefore, where the foreign conviction was in a non-common law jurisdiction, there might not be any document equivalent to an indictment. If such documents are not available, you should introduce evidence to that effect. If the case is then appealed to the Federal Court, the court will understand why the department relied on the testimony of the person concerned. It is important to establish the fact of unavailability, since the testimony of the person concerned could be somewhat less reliable than the documents in issue. The same would apply to the unavailability of police records and similar documents, for whatever reason.

1.2 *Anderson*

Mr. Anderson was reported on the grounds that he was a person described in A27(2)(a), in that if he were applying for entry, he would not be granted entry by reason of his being a member of an inadmissible class described in A19(1)(c). The adjudicator, drawing a Canadian equivalent different from that alleged in the direction, found the person to be described in A27(2)(a) and A19(2)(a) and issued a departure notice. In other words, he found Mr. Anderson to be a member of an inadmissible class other than the inadmissible class specified in the A27 report and based his departure notice on that finding.

In *Anderson* [*Anderson v. Minister of Employment and Immigration*, FCA, Doc. No. A-267-80, June 5, 1980] the court held that there can be no switching between the criminality provisions of A19 where the report alleges that the person is described in A27(2)(a). A removal under A27 can only be effected on the basis of a ground contained within the report required by that section. In addition, the court found that the adjudicator was unable to determine the essential elements of the foreign offence on the basis of the information presented at the inquiry. It was, therefore, impossible for him to determine that the foreign offence would have been an offence punishable by way of indictment under the *Criminal Code*.

As a result of this decision, it is the department's position that:

- reports should refer to as many possible Canadian equivalents as are reasonably necessary, and
- if there is any doubt as to the possible Canadian equivalent, both A19(1)(c) and A19(2)(a) should be mentioned with A27(2)(a) in your report.

1.3 *Dayan*

Mr. Dayan was reported on the grounds that he was a person described in A27(2)(a), in that if he were applying for entry, he would not be granted entry by reason of his being a member of an inadmissible class described in A19(1)(c). After a review of the facts of the case the adjudicator ordered the subject deported.

The case was subsequently appealed to the Federal Court [*Dayan v. Minister of Employment and Immigration*, FCA, Doc. No. A-456-86, March 5, 1987]. Counsel for the appellant argued that the proper Canadian equivalent of the offence committed by his client had not been established at the inquiry. While the court supported the adjudicator, it took the opportunity to outline measures that will help to equate foreign offences with Canadian ones.

The court indicated that you should make every effort to obtain the text of the statutory provisions of the foreign law when attempting to establish the Canadian equivalent. This text should be introduced at the inquiry so that it will form part of the official record. The court recognized that not all nations codify their laws in a text of statutes similar to our own. The absence of a specific equivalent provision in the statute law of another country, when this is the case, should be reflected in the record of the inquiry.

1.4 Implications

You must bear in mind that to be successful at an inquiry involving a foreign conviction:

- you must obtain evidence of the conviction of the person concerned, the legal description of the foreign offence and particulars of the offence as usually evidenced by the charge or indictment in order to establish the Canadian equivalent of the foreign offence. These should all be introduced as exhibits at the inquiry, whether or not you think they are necessary in the particular case. If questions then arise as to the proper equivalent, any doubt will be resolved more effectively.
- depending on the facts of the case, it may be necessary for reports to be more general, considering:
 - the difficulty in determining a Canadian equivalent offence, and
 - the fact that the criminal equivalence determined at inquiry must fall within the allegation contained in the report.

Section 3 below gives a full list of leading cases dealing with criminal equivalence.

2. PARDONS AND REHABILITATION

2.1 Pardons for convictions in Canada

Persons who have obtained criminal convictions in Canada can no longer apply for rehabilitation. Rather, to overcome inadmissibility, they are to apply to the National Parole Board for a pardon. Section 3 of the *Criminal Records Act* provides that a person who has been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament may apply to the National Parole Board for a pardon of that offence.

Before an application for a pardon may be considered, the following period must have elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence:

- five years, in the case of an offence prosecuted by indictment, or a service offence within the meaning of the *National Defence Act* [*Criminal Records Act*, s. 4(a)]
- three years, in the case of an offence punishable on summary conviction, or a service offence within the meaning of the *National Defence Act*, other than a service offence referred to in s. 4(a)(ii) of the *Criminal Records Act*.

For an offence prosecuted by indictment, the National Parole Board may grant a pardon if it is satisfied that the applicant, during the period of five years, has been of good conduct and has not been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament.

For an offence punishable on summary conviction, a pardon shall be issued if the offender has not been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament during the period of three years.

Under s. 5 of the *Criminal Records Act*, a pardon:

is evidence of the fact that the Board, after making proper inquiries, was satisfied that the applicant for the pardon was of good behaviour and that the conviction in respect of which the pardon is granted or issued should no longer reflect adversely on the applicant's character; and, unless the

pardon is subsequently revoked or ceases to have effect, vacates the conviction in respect of which it is granted and, without restricting the generality of the foregoing, removes any disqualification to which the person so convicted is, by reason of the conviction, subject by virtue of the provisions of any Act of Parliament, or a regulation made thereunder.

Pardon application kits or additional information can be obtained from:

Clemency and Pardon Division
National Parole Board
340 Laurier Avenue West
Ottawa, Ontario
K1A 0R1
Tel. 613-954-2033

2.2 Pardons for convictions outside Canada

The granting of a pardon in another country does not necessarily render the person concerned admissible to Canada. You must take several factors into consideration before reaching a conclusion as to whether a person is admissible or not. The department holds the position that if a pardon recognizes that the person should not have been convicted (that is, the person was convicted in error), effect will be given to the pardon. However, if the pardon was granted for rehabilitation purposes, then the department will not give effect to it.

The Federal Court of Appeal stated in *Burgon* that we should accept pardons that are granted in courts where the laws and legal system allowing the pardon are substantively similar in purpose, process and result to ours, unless we have serious cause not to do so [*Burgon v. Minister of Employment and Immigration*, FCA, Doc. No. A-17-90, February 22, 1991]. Although countries that have legal systems based on common law generally would be considered similar to ours, you must examine the circumstances of each case carefully.

In *Burgon*, the court considered whether Ms. Burgon was excluded from Canada under A19(1)(c) because of having pleaded guilty on a charge of conspiring to supply controlled substances, for which she was sentenced to two years' probation, or whether she is saved from the operation of A19(1)(c) by s. 13(1) of the United Kingdom's *Powers of Criminal Courts Act, 1973*, which stipulates:

A conviction of an offence for which an order is made under this Part of this Act placing the offender on probation discharging him absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the preceding provisions of this Act....

Policy related to criminal records has changed in recent years to reflect altering social attitudes towards those persons who have acquired criminal convictions. The Canadian *Criminal Records Act* invoked in 1979 allows criminal records to be pardoned or erased in certain circumstances.

Similar provisions to assist those persons with criminal records in making a new start in life were enacted in the U.K. and other countries. In fact, the British allow offenders placed on probation to be deemed not to have a conviction. The U.K. *Rehabilitation of Offenders Act, 1974* treats a probation order as a conviction for which a person may become rehabilitated, and thus the conviction to be considered a spent conviction. It was this provision that enabled Ms. Burgon to have her conviction expunged in the U.K. This legislation, while not identical to that of Canada, is similar in content and effect.

In *Burgon* the court ruled that "we should recognize the laws of other countries which are based on similar foundations to ours, unless there is a solid rationale for departing therefrom". Thus a person who has become rehabilitated and whose conviction is spent under the U.K. *Rehabilitation of Offenders Act, 1974* is generally not to be considered to have been convicted of an offence for the purposes of the administration of the *Immigration Act*, unless there is some valid basis for deciding otherwise.

Legal Services suggest that you apply the following steps as a general approach to persons who have been granted foreign pardons:

- Determine whether the person is prima facie inadmissible under either A19(1)(c.1) or A19(2)(a.1)(i).

- Decide whether the foreign country's legal system is based on similar foundations and shares similar values with Canada.
- Determine whether the person concerned falls within the exception by satisfying either the Governor in Council or the Minister, as the case may be, that the person has rehabilitated himself or herself.
- For countries with legislation similar to Canada's, examine the foreign legislation to determine whether the pardon recognizes that the conviction will be said never to have happened (and has effectively been expunged) or whether the pardon recognizes that rehabilitation has taken place. Where it is merely a matter of rehabilitation, the person concerned is inadmissible under the *Immigration Act*.

3. CASE LAW ON CRIMINAL EQUIVALENCIES

3.1 Adjudicator's jurisdiction

Kalacharan [Kalacharan v. Minister of Employment and Immigration, FCTD, Doc. No. T-750-76, March 24, 1976]

The Federal Court of Appeal granted a conditional discharge, which means a conviction is deemed never to have been registered. Thus the basis for making a deportation order under A27(2)(d) was deemed not to have existed.

Anderson [Anderson v. Minister of Employment and Immigration, FCA, Doc. No. A-267-80, June 5, 1980]

To determine which Canadian offence is equivalent to the U.S. conviction, the adjudicator needs the precise wording of the U.S. offence so that the adjudicator can compare the essential elements of the offence. An order which is not based on proper evidence will be set aside.

Wilson [Wilson v. Minister of Employment and Immigration, FCA, Doc. No. A-224-80, June 18, 1980]

The court outlined which sections of the *Criminal Code* relating to N.S.F. cheques fall under A19(1)(c). The court determined that the equivalent of the offence did not fall under A19(1)(c).

Clarke [Clarke v. Minister of Employment and Immigration, FCA, Doc. No. A-588-84, October 31, 1984]

The court indicated that the adjudicator is not bound to consider only the Canadian equivalent given in the report. The adjudicator may consider other Canadian equivalents if the appropriate equivalent leads to the person concerned being described in the paragraph of the *Immigration Act* cited in the report.

Steward No. 3 [Steward v. Minister of Employment and Immigration, FCA, Doc. No. A-962-87, April 15, 1988]

The court outlined three ways in which to determine equivalency.

Mohammad No. 1 [Mohammad v. Minister of Employment and Immigration, FCTD, Doc. No. T-150-88, March 11, 1988]

The fact that the Governor in Council has not considered rehabilitation does not affect the adjudicator's jurisdiction. A27(1) requires that the immigration officer possess information that the person concerned is described in A19(1)(c), and to know that the person concerned has not satisfied the Governor in Council as to his or her rehabilitation.

Mohammad No. 3 [Mohammad v. Minister of Employment and Immigration, FCA, Doc. No. A-362-88, December 8, 1988]

The officer need not wait for a decision by the Governor in Council on rehabilitation before writing the report.

3.2 Evidence required to prove equivalency

Brannson [Brannson v. Minister of Employment and Immigration, FCA, Doc. No. A-213-80, April 12, 1980]

The court ruled that when the person concerned has been undoubtedly convicted, the validity of the conviction on the merits cannot be put in issue at inquiry. See also section 1.1 above.

Dayan [Dayan v. Minister of Employment and Immigration, FCA, Doc. No. A-456-86, March 5, 1987]

The court noted that no evidence of the foreign statute was adduced at inquiry. The court outlined three ways in which equivalency may be determined. In this case, the actual facts which led to the convictions gave the adjudicator adequate evidence to support a finding under A19(1)(c). The court stated that proof of the foreign statute should have been made. Application of the concept of offences as *malum in se* to prove equivalency should only take place when proof of foreign law cannot be made and only when the foreign law is that of a non-common law country. See also section 1.3 above.

Anderson [Anderson v. Minister of Employment and Immigration, FCA, Doc. No. A-267-80, June 5, 1980]

The court gave guidance on how to establish Canadian equivalents to foreign convictions. See also section 1.2 above.

Hill [Hill v. Minister of Employment and Immigration, FCA, Doc. No. A-514-86, January 29, 1987]

The court set aside a deportation order because essential evidence was not produced. This decision outlines a three-point method for establishing whether there is sufficient evidence to determine equivalency.

Mak [Mak v. Minister of Employment and Immigration, FCA, Doc. No. A-149-83, September 19, 1983]

The court upheld the adjudicator's decision that the applicant had been convicted of an offence which, if committed in Canada would have been the offence of attempted robbery prescribed by the *Criminal Code*. The circumstances leading to the conviction were introduced by testimonial evidence only.

Steward No. 3 [Steward v. Minister of Employment and Immigration, FCA, Doc. No. A-962-87, April 15, 1988]

The court reiterated the test to be conducted in order to establish equivalency. In this case, the foreign offence is broader than the Canadian offence. The court determined that equivalency had not been established.

3.3 Other case law

Robertson [Robertson v. Minister of Employment and Immigration, FCA, Doc. No. A-235-78, September 11, 1978]

Paragraph 19(1)(c) of the Act can only be used to deport a person when that person has been convicted of an offence for which the maximum punishment is ten years' imprisonment at the date of the deportation order.

Davis [Davis v. Minister of Employment and Immigration, FCA, Doc. No. A-81-86, June 19, 1986]

This decision outlines the relevance of taking into account the currency exchange rate to establish equivalency in the case of foreign conviction involving theft.

Arnrow [Arnrow v. Minister of Employment and Immigration, FCA, Doc. No. A-599-81, September 28, 1981]

This case involves a conviction in absentia. The court stated that "a conviction is a conviction".

Kai Lee [Kai Lee v. Minister of Employment and Immigration, FCA, Doc. No. A-11-79, June 20, 1979]

A person prosecuted and convicted in Canada by way of summary conviction is, for the purposes of the *Immigration Act*, convicted of a summary offence despite the fact that the offence could have proceeded by indictment.

Potter [Potter v. Minister of Employment and Immigration, FCA, Doc. No. A-560-79, December 5, 1979]

A person prosecuted and convicted abroad of a hybrid offence shall be deemed to have been convicted by indictment.

4. EXAMPLES OF DETERMINING EQUIVALENCE

4.1 United States Internal Revenue Code

Paragraph 7208(1) of 26 USC 1976 (the *Internal Revenue Code* of the United States) provides that "any person" who

willfully makes and subscribes any return, statement, or other document which contains or is verified by a written declaration that is made under the penalties of perjury, and which he does not believe to be true and correct as to any material matter...

shall be guilty of a felony....

A corresponding Canadian provision might be s. 239(1)(a) of the *Income Tax Act*, which stipulates that every person who has

(a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation...

is guilty of an offence....

You could analyze the elements of these two provisions for equivalence as follows:

FOREIGN PROVISION	CANADIAN PROVISION	EQUIVALENT ELEMENT
any person who	any person who	Equivalent element
willfully makes and subscribes	made, or participated in, assented to or acquiesced in the making	The foreign offence states the element of intent ("willfully"). While the Canadian offence does not specifically refer to intent, it would be argued that intention is clearly a required element of the Canadian offence. While the U.S. provision refers to making a return, the Canadian statute refers to making a statement in a return. It would be argued that both statutes attempt to control the making of false statements in returns, and while the language of the statutes may differ, their intent and operation are the same.
makes ... any return	return ... filed or made	Equivalent element

which contains or is verified	as required by or under this act or a regulation	<p>The Canadian offence may be wider in that it does not require the return to be verified by a written declaration made under penalties of perjury. The point is arguable, in that the Canadian statute contemplates that the return will be filed "as required by or under this Act or a regulation". Research of the Canadian statute may or may not reveal a Canadian compliance method equivalent to that contained in the U.S. statute. The argument here could be first, that the two elements are equivalent on their face; second, that the adjudicator should find that the "narrower" U.S. element is included in the more broadly defined Canadian element and is therefore equivalent; and third, that if it is found that there is no equivalency on this element, it is irrelevant to the adjudicator's decision because the difference between the two elements is one of form, not of substance, and in any event, the element is not essential to the offence.</p>
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and which he does not believe	in the making of false or deceptive statements	The Canadian offence, it might be argued, is more broadly defined than the U.S. offence, in that it contemplates the making of merely deceptive statements (which may well be true), as well as false statements. The U.S. statute refers to statements not believed to be true and correct. One could argue that these elements are equivalent and that in any event, the element of the narrower American offence is included within the more broadly defined Canadian offence.
by a written declaration that is made under the penalties of perjury ... to be true and correct as to any material matter.	—	The U.S. statute refers to "any material matter", implying, perhaps, that untrue and incorrect statements might be permissible in a return if they were immaterial. Fortunately the Canadian statute, by omitting to include the concept of materiality, forces us to address the totality of the return as to false or deceptive statements, not just "material" matters. This, it could be argued, is a more broadly defined approach than that taken in the U.S. statute, and therefore the element of the U.S. statute is included in the Canadian element.

On the basis of this analysis, or similar arguments, you would allege that the statute provisions were equivalent.

4.2 Hong Kong Prevention of Bribery Ordinance

Paragraph 9(1)(b) of the *Hong Kong Prevention of Bribery Ordinance* provides that:

any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his...

(b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

A corresponding Canadian provision might be s. 426(1) of the *Criminal Code*:

Every one commits an offence who

(a) corruptly...

— (ii) being an agent, demands, accepts or offers or agrees to accept from any person,

a reward, advantage or benefit of any kind as consideration for doing or forbearing to do, or for having done or forborne to do, any act relating to the affairs or business of his principal or for showing or forbearing to show favour or disfavour to any person with relation to the affairs or business of his principal....

You could analyze the elements of these two provisions for equivalence as follows:

without lawful authority or reasonable excuse	corruptly	Apparently equivalent
solicits or accepts	demands, accepts, offers to or agrees to accept	Apparently equivalent
any advantage	reward, advantage or benefit of any kind	Apparently equivalent
as an inducement to or reward for or otherwise	as consideration	Apparently equivalent
showing.... favour ... to any person	showing ... favour to any person	Apparently equivalent
in relation to his principal's affairs or business	with relation to the affairs or business of his principal.	Apparently equivalent

It is certainly arguable that these two offences are equivalent. They seem to contain the same essential elements and would appear to have been enacted to achieve the same quality and degree of social regulation.

4.3 South Africa Road Traffic Ordinance

Subsection 135(1) of the South Africa *Road Traffic Ordinance* provides that:

The driver of a vehicle on a public road at the time when such vehicle is involved in or contributes to any accident in which any other person is killed or injured or suffers damage in respect of any property or animal...

- (a) shall immediately stop the vehicle;
- (b) shall ascertain the nature and extent of any damage sustained.

Section 252 of the *Criminal Code* stipulates that:

(1) Every one who has the care, charge or control of a vehicle, vessel or aircraft that is involved in an accident with

- (a) another person,
- (b) a vehicle, vessel or aircraft, or
- (c) in the case of a vehicle, cattle in the charge of a person,

and with intent to escape civil or criminal liability, fails to stop his vehicle, vessel, or, where possible, his aircraft, give his name and address and, where any person has been injured or appears to require assistance, offer assistance, is guilty...

(2) In proceedings under subsection (1), evidence that an accused failed to stop his vehicle, vessel, or where possible, his aircraft, as the case may be, offer assistance where any person has been injured or appears to require assistance, and give his name and address, is, in the absence of evidence to the contrary, proof of an intent to escape civil or criminal liability.

You could analyze the elements of these two provisions for equivalence as follows:

FOREIGN PROVISION	CANADIAN PROVISION	COMMENTS
The driver of a vehicle on a public road	Everyone who has the care, charge or control of a vehicle	The Canadian element is more broadly defined. The argument could be made that a "driver" in the South African provision would be included in "Everyone who has the care, charge or control" in the Canadian provision. Note that the element of the Canadian offence does not require that the offence take place on a public road.

FOREIGN PROVISION	CANADIAN PROVISION	COMMENTS
The driver of a vehicle on a public road	Everyone who has the care, charge or control of a vehicle	The Canadian element is more broadly defined. The argument could be made that a "driver" in the South African provision would be included in "Everyone who has the care, charge or control" in the Canadian provision. Note that the element of the Canadian offence does not require that the offence take place on a public road.
at the time when such vehicle is involved in or contributes to any accident	that is involved in an accident	These elements would appear to be equivalent.
in which any other person ... suffers damage in respect of any property...	—	Note the manner in which "damage" is treated in the South African provision, which includes a penalty for failure to stop to ascertain damage. The Canadian offence provides a penalty for failure to stop with intent to escape civil or criminal liability.
—	with intent to escape civil or criminal liability	Intention to escape civil or criminal liability is not an element of the South African offence. The onus in the South African offence is to stop to ascertain the nature and extent of damage.

It could be argued in this situation that the essential element of the Canadian provision — that is, the intention to escape civil or criminal liability — is not contained in the South African offence, which focuses on the obligation to stop to ascertain the nature and extent of any damage sustained. Thus, although the offences are similar in nature, they may not be found to be equivalent by the adjudicator.

APPENDIX C

DISCRETIONARY ENTRY UNDER A19(3)

If the grounds of a person's inadmissibility are relatively minor and if denial of admission would be unduly harsh, an SIO has discretionary authority under A19(3) to grant the person entry for a maximum period of 30 days.

An SIO should use this discretionary authority only if he or she:

- has reviewed a report under A20(1) and considers that the person falls within A19(2)
- believes that an inquiry would serve no useful purpose, and
- believes that compassionate or other pressing considerations warrant entry.

1. PRE-SCREENING

As the examining IO, when you identify an inadmissibility of a person seeking admission you must screen a request for discretionary entry. You must ensure that the individual falls within the criteria for consideration of discretionary entry. You should identify the person's desire for the service of discretionary entry, and his or her ability to pay the processing fee.

You must counsel the person on the reason for the inadmissibility and the processing fee. Instances may arise where processing or consideration of entry is not possible. In that case it is very important to explain to the person that review by an SIO would not result in admission to Canada being granted, and that the fee would not be refunded if the request is not successful.

After you complete a Report under Subsection 20(1) of the *Immigration Act* (form IMM 1093), you must counsel the person on his or her available options as a result of the inadmissibility you identified during examination. If the person is within the scope of a successful admission under A19(3), or if the person insists on consideration for discretionary entry, you must complete an Immigration Cost Recovery Control form (IMM 5194; see APPENDIX G and section 2. below).

If the person advises you that he or she is unable or unwilling to pay the fee immediately, you should counsel the person to withdraw his or her request for admission, and to return when he or she has the ability and willingness to do so. There is no authority to accept a request for consideration for discretionary entry unless the fee has been paid.

2. FORMAL PROCESSING

If your pre-screening indicates that the person is willing and able to pay the fee and that he or she requests a review and discretionary entry consideration by an SIO, after counselling the person appropriately you must complete and sign an Immigration Cost Recovery Control form (IMM 5194). Your completing the IMM 5194 and collecting the processing fee begins the formal processing of the request. The IMM 5194 form provides an audit trail of cost-recovery fees collected in discretionary entry cases.

3. COLLECTING THE PROCESSING FEE

The processing fee for requests under A19(3) is \$100 for an individual and \$200 for a group. Unless the person falls within the exempt category, you must collect a fee for each written request for consideration of discretionary entry. You must issue a receipt. Note in the appropriate box of the IMM 5194 that the fee has been paid and give the receipt number.

If the person's request for entry is granted, you should also record the fee paid and the receipt number (or the exemption, if applicable) in the appropriate block of the person's visitor record (IMM 1097).

If the person's request for entry is refused, retain the IMM 5194 for financial statistics.

Persons are exempt from paying the processing fee in two circumstances:

- when the person:
 - is inadmissible because he or she lacks a required visitor visa, and

- would have been exempt from a processing fee for a visitor visa if he or she had obtained one before arriving at the POE (for information on visitor visa exemptions, see chapter PE 6, *Examining Visitors*)
- when an adjudicator issues discretionary entry under A19(3).

4. DISCRETIONARY ENTRY AND EMPLOYMENT AUTHORIZATIONS

If an SIO authorizes discretionary entry under A19(3) to overcome a person's lack of an employment authorization, the person must pay a fee before a Visitor Extension [**@please confirm that one form has two IMM numbers:**] (IMM 1097 or IMM 1442) is issued. The appropriate officer must code the visitor extension to show that the fee has been paid or an exemption applied. For coding, see the chapter on cost recovery in the IH manual.

APPENDIX D

SAMPLE OF IMM 1282 (09-94) B - ALLOWED TO LEAVE CANADA



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

PROTECTED WHEN COMPLETED - A
PROTÉGÉ UNE FOIS REMPLI

ALLOWED TO LEAVE CANADA
AUTORISATION DE QUITTER LE CANADA

Date
FOSS ID No. - N° du SSOBL

Surname - Nom de famille				Given Names - Prénom(s)				File No. - N° de référence			
Date of Birth Date de naissance				Country of Birth - Pays de naissance				Country of Citizenship - Pays de citoyenneté			
D-J M Y-A											

I am of the opinion that it would, or may be, contrary to the Immigration Act, or the Immigration Regulations, to grant admission to you, or otherwise let you come into Canada.

Je suis d'avis qu'il serait, ou qu'il peut être, contraire à la Loi sur l'immigration ou au Règlement sur l'immigration de vous accorder l'admission, ou de vous laisser, par ailleurs, entrer au Canada.

Therefore, pursuant to

Par conséquent, conformément à

- ☐ paragraph 20 (1)(b)
☐ subsection 23 (4)
☐ paragraph 23 (4.2)(b)

- ☐ l'alinéa 20 (1) b)
☐ paragraphe 23 (4)
☐ l'alinéa 23 (4.2) b)

of the Immigration Act, I am allowing you to leave Canada forthwith. No inquiry has been caused in respect of this matter.

de la Loi sur l'immigration, je vous autorise à quitter le Canada immédiatement. Aucune enquête n'a été tenue à ce sujet.

The information provided on this form is collected under the authority of the Immigration Act for the purpose of allowing you to leave Canada. This information will be stored in Personal Information Bank number CIC PPU 270, Enforcement Data System, and you have the right of access to it and to its protection under the provisions of the Privacy Act.

Les renseignements fournis dans le présent formulaire sont recueillis en vertu de la Loi sur l'immigration aux fins de vous autoriser de quitter le Canada. Les renseignements seront versés dans le fichier de renseignements personnels CIC PPU 270, Système de données sur l'exécution de la Loi. Ils sont protégés et accessibles en vertu des dispositions de la Loi sur la protection des renseignements personnels.

Signature of Immigration Officer (A20 (1)(b) case)
Signature de l'agent d'immigration (pour le cas visé au L20 (1) b))

Signature of Senior Immigration Officer (A23 (4) or A23(4.2)(b) cases)
Signature de l'agent principal (pour les cas visés au L23 (4) ou L23(4.2)(b))

I HEREBY VOLUNTARILY WITHDRAW MY APPLICATION FOR
ADMISSION TO CANADA

J'ATTESTE PAR LA PRÉSENTE QUE JE RETIRE VOLONTAIREMENT MA
DEMANDE D'ADMISSION AU CANADA

Signature of person concerned - Signature de la personne concernée

APPENDIX E

SAMPLE OF IMM 1237 (12-92) B – DIRECTION TO RETURN TO THE U.S. (UNDER SUBSECTION
20(2) OF THE IMMIGRATION ACT)



Employment and Immigration Canada Emploi et Immigration Canada

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PROTÉGÉ UNE FOIS REMPLI

DIRECTION TO RETURN TO THE UNITED STATES
(UNDER SUBSECTION 20(2) OF THE IMMIGRATION ACT)

ORDONNANCE DE RETOURNER AUX ÉTATS-UNIS
(AUX TERMES DU PARAGRAPHE 20(2) DE LA LOI SUR L'IMMIGRATION)

Surname – Nom de famille		Given Names – Prénom(s)		FOSS ID No. – N° d'ID SSOBL	
Date of Birth Date de naissance	D-J M Y-A	Country of Birth – Pays de naissance		File No. – N° de référence	
Country of Citizenship – Pays de citoyenneté				Cross-reference No(s) – N° de dossiers reliés	
Permanent or Temporary Address in the United States – Adresse permanente ou temporaire aux États-Unis					

You have this day been examined in accordance with subsection 12(1) of the Immigration Act, (hereinafter called the Act). I am of the opinion that it is contrary to this Act and/or Immigration Regulations to grant you admission to Canada or otherwise let you come into Canada.

Vous avez aujourd'hui été interrogé(e) conformément au paragraphe 12(1) de la Loi sur l'immigration (ci-après appelée la Loi). J'estime que vous accorder l'admission ou la permission d'entrer au Canada contreviendrait à la Loi et (ou) au Règlement sur l'Immigration.

Because a Senior Immigration Officer is not available to receive my report, under subsection 20(2) of the Act, I direct that you return to the United States until a Senior Immigration Officer is available.

Comme aucun agent principal n'est disponible pour recevoir mon rapport, je vous ordonne, aux termes du paragraphe 20(2) de la Loi, de retourner aux États-Unis en attendant qu'un agent principal soit disponible.

A Senior Immigration Officer will be available at

Un agent principal sera disponible à

Location (Address of CIC) – Endroit (Adresse du CIC)	Date
	Time – Heure

at which time I will submit my report. If you desire to continue with your request for admission to Canada, please return on the date and time mentioned above.

Je présenterai alors mon rapport. Si vous désirez toujours solliciter l'admission au Canada, veuillez vous présenter à la date et à l'heure indiquées ci-dessus.

Signature of Immigration Officer – Signature de l'agent d'immigration

Date

AFFIX
PHOTOGRAPH

Port of Entry – Point d'entrée

APPOSER LA
PHOTOGRAPHIE

The information provided on this form is collected under the authority of the Immigration Act for the purpose of serving a DIRECTION TO RETURN TO THE UNITED STATES. This information will be stored in Personal Information Bank number EIC PPU 270, ENFORCEMENT DATA SYSTEM, and you have the right of access to it and to its protection under the provisions of the Privacy Act.

Les renseignements fournis dans le présent formulaire sont recueillis en vertu de la Loi sur l'immigration aux fins de VOUS SIGNIFIER UNE ORDONNANCE DE RETOURNER AUX ÉTATS-UNIS. Les renseignements seront versés dans le fichier de renseignements personnels CEI PPU 270, SYSTÈME DE DONNÉES SUR L'EXÉCUTION DE LA LOI. Ils sont protégés et accessibles en vertu des dispositions de la Loi sur la protection des renseignements personnels.

CC - FILE ALL DETAILS OF THIS FORM SHOULD BE ENTERED IN FOSS AS A STATUS ENTRY.


C.C. - DOSSIER TOUS LES RENSEIGNEMENTS FIGURANT SUR CE FORMULAIRE DOIVENT FAIRE L'OBJET D'UNE ENTRÉE DU STATUT AU SSOBL.

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

APPENDIX F

SAMPLE OF IMM 1216 (12-92) B - NOTICE OF LIABILITY TO PAY REMOVAL/DETENTION COSTS

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 Employment and Immigration Canada Emploi et Immigration Canada

**NOTICE OF LIABILITY TO CONVEY AND/OR
PAY REMOVAL COSTS**

**AVIS RELATIF À L'OBLIGATION DE TRANSPORTER
LA PERSONNE CONCERNÉE ET (OU) DE PAYER
SES FRAIS DE RENVOI**

(Name & Address of Transportation Company)
(Nom et adresse du transporteur)

Complete CIC Address - Adresse complète du CIC

CIC File No. - N° de référence du CIC Date

CONCERNING: (Full Name of Person Concerned)
CONCERNANT: (Nom complet de la personne concernée)

WHO ARRIVED ON YOUR:
QUI EST ARRIVÉ PAR:

☐ FLIGHT NO. ☐ BUS NO. ☐ TRAIN NO. ☐ NAME OF VESSEL
☐ LE VOL N° ☐ L'AUTOBUS N° ☐ LE TRAIN N° ☐ NOM DU NAVIRE

ON TICKET SERIAL NO. ☐ ATTACHED ☐ NOT AVAILABLE
LE N° DE SÉRIE DU BILLET CI-JOINT NON DISPONIBLE

YOUR ATTENTION IS DIRECTED TO SECTIONS 85, 86 AND 87 OF THE IMMIGRATION ACT, AS AMENDED.
VEUILLEZ VOUS REPORTER AUX ARTICLES 85, 86 ET 87 DE LA LOI SUR L'IMMIGRATION, TELS QUE MODIFIÉS.

☐ IN VIEW OF THE FACT THAT THE PERSON NAMED ABOVE IS THE SUBJECT OF:
COMME LA PERSONNE PRÉCITÉE FAIT L'OBJET:

☐ A Deportation Order on Form IMM 1218; ☐ An Exclusion Order on Form IMM 1214; ☐ A Rejection Order on Form IMM 1217;
d'une mesure d'expulsion (IMM 1218); d'une mesure d'exclusion (IMM 1214); d'une mesure de rejet (IMM 1217);

IMM 1238 or IMM 5010, as applicable;
d'une directive d'engorgement de retourner aux États-Unis conformément au paragraphe de la Loi
(IMM 1237, IMM 1238 ou IMM 5010, selon le cas);

OR/OU

☐ IN VIEW OF THE FACT THAT THE PERSON NAMED ABOVE IS ALLOWED TO LEAVE CANADA PURSUANT TO SUBSECTION
DE LA LOI SUR L'IMMIGRATION (IMM 1282);

☐ COMME LA PERSONNE PRÉCITÉE EST AUTORISÉE À QUITTER LE CANADA CONFORMÉMENT AU PARAGRAPHE
DE LA LOI SUR L'IMMIGRATION (IMM 1282);

☐ You are hereby given notice of liability for removal and detention costs.
Vous êtes par les présentes avisé que vous devez payer les frais de renvoi et de garde;

☐ You are hereby ordered to convey or cause the person named above to be conveyed to
vous êtes par les présentes ordonné de transporter ou de faire transporter la personne précitée à

Signature of Immigration Officer or Senior Immigration Officer
Signature de l'agent d'immigration ou de l'agent principal

WHEN TRANSPORTATION ARRANGEMENTS HAVE BEEN FINALIZED, PLEASE COMPLETE THE FOLLOWING STATEMENT AND RETURN COPY 2 (PINK)
OF THIS FORM TO THE ADDRESS SHOWN ABOVE.
UNE FOIS RÉGLÉES LES MODALITÉS DE TRANSPORT, VEUILLEZ REMPLIR LA DÉCLARATION SUIVANTE ET RENVoyer LA FEUILLE 2 (ROSE) DU
PRÉSENT FORMULAIRE À L'ADRESSE INDICUÉE CI-DESSUS.

STATEMENT OF CONVEYANCE - DÉCLARATION RELATIVE AU TRANSPORT
We have arranged to have the person named above conveyed to
Nous avons pris des dispositions pour que la personne précitée soit transportée à

Leaving - De on - par Date
Point of Departure - Point de départ Flight Number or Name of Vessel N° de vol ou nom de véhicule

At Hours. Removal and detention costs, if applicable, will be borne by the company.
À H. Ledit transporteur assumera les frais de renvoi et de garde, s'il y a lieu.

Name of Transportation Company Signature of Company Official Date
Nom du transporteur Signature du représentant du transporteur

If, pursuant to paragraph 85(1)(a) of the Immigration Act, conveyance is to be to a country requiring approval of the Minister of Employment and
Immigration, complete the pertinent items hereunder and return both copies 1 (white) and 2 (pink) to the above address for appropriate signature.
Si, conformément à l'article 85(1)(a) de la Loi sur l'immigration, le transport doit se faire vers un pays devant être approuvé par le Ministre de l'Emploi et de l'Immigration, veuillez remplir les espaces pertinents ci-dessous et renvoyer
les deux feuilles, c.-à-d. 1 (blanche) et 2 (rose), à l'adresse ci-dessus pour que les personnes compétentes les signent. La feuille 1 vous sera ensuite renvoyée.

It is agreed by the parties concerned that the person concerned may be conveyed to
Il est convenu par les intéressés que la personne concernée peut être transportée à

Signature & Title of Company Official Date Signature of the Minister or his Delegate Date
Signature et titre du représentant du transporteur Signature du Ministre ou de son délégué

NOTE: For a greater understanding of the obligations of transportation companies under the Immigration Act, write to Immigration HQ, Ottawa, Ontario
K1A 0G9 for a free set of information directives.
NOTA: Si vous désirez être mieux informés des obligations que doivent remplir les transporteurs aux termes de la Loi sur l'immigration, veuillez écrire
à l'Administration centrale d'Immigration Canada à Ottawa (Ontario) K1A 0G9 pour obtenir une série gratuite des directives concernant le transport.

IMM 1710 (12-92) THIS FORM HAS BEEN ESTABLISHED BY THE MINISTERS OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

Canada

TRANSPORTATION COMPANY
POUR LE TRANSPORTEUR

1

APPENDIX G
SAMPLE OF IMM 5194 (02-91) B - IMMIGRATION
COST RECOVERY CONTROL



Employment and
Immigration Canada

Emploi et
Immigration Canada

IMMIGRATION COST RECOVERY CONTROL FORM
FORMULAIRE DE CONTRÔLE DE RECouvreMENT DES FRAIS D'IMMIGRATION

PROTECTED WHEN COMPLETED
PROTÉGÉ UNE FOIS REMPLI - B

PART A - PARTIE A				CLIENT DETAILS - RENSEIGNEMENTS CONCERNANT LE CLIENT				File No. - N° de dossier			
Surname - Nom de famille				Given Name(s) - Prénom(s)				Init.			
Date of Birth Date de naissance				Place and Country of Birth Lieu et pays de naissance				Address - Adresse			
Telephone No. - Numéro de téléphone Home / Maison				Business / Affaires				Province			
Address (in Canada) - Adresse (au Canada)				Apt. - App.				Postal Code - Code postal			
City - ville				Province				Telephone No. - Numéro de téléphone			
PART B - PARTIE B				OFFICE USE ONLY - BUREAU SEULEMENT							

The following service(s) is (are) being requested - Le(s) service(s) suivant(s) a (ont) été demandé(s)

- Investment Filing Fee - Enregistrement d'une proposition d'investissement
- Transcript of Inquiry - Compte rendu d'une enquête
- Callout / overtime - Rappel / heures supplémentaires
- Minister's Consent / Deportation - Demande d'autorisation du ministre / expulsion
- Other (Specify) - Autre (Préciser)

☐
☐
☐
☐
☐

Remarks - Remarques

Cost Recovery Code Code de recouvrement des frais	Fee Frais	Gst Tps	Receipt No. No. de reçu
--	--------------	------------	----------------------------

Authorized officer's signature
Signature de l'agent autorisé

Date

Mail - In / Par courrier ☐

In Person / En personne ☐

IMM 5194 (02-91) B

Canada

APPENDIX H

AUTHORITY TO GRANT APPROVAL OF REHABILITATION – A19(1)(a.1)

Rehabilitation approval is the authority from the Minister or delegated authority to overcome the inadmissibility of persons who have committed or have been convicted outside Canada of criminal acts.

At ports of entry, officers authorised by instrument I-53 may approve rehabilitation for persons who are seeking admission five years or more after either completing all parts of sentences for offences or committing an act or omission. In addition, they must:

- not have more than two convictions [A 19(2)(a.1)(i)]; or
- not have committed more than one act or omission [A 19(2)(a.1) (ii); and
- not be described in any criminally inadmissible class other than A19(2)(a.1) (i) or (ii);
- not have used violence, a weapon or caused serious property damage or injury to anyone while committing the offence(s), act or omission.

1. HOW IS THE APPLICATION MADE?

Applicants must use the form *Application for approval of rehabilitation (IMM 1444)*

Applicants who committed offences in the United States do **not** need to supply documents such as letters of rehabilitation. If the applicant is credible, and, if officers can confirm the details of the offences through CPIC and NCIC they should conclude the application on the spot.

Persons eligible to apply for rehabilitation at a port of entry must not be referred to a visa office, unless it is more convenient for an applicant to deal with a visa officer.

2. REHABILITATION CONSIDERATIONS AND EVALUATING RISK

You must take a number of factors into account to assess whether a person is rehabilitated. You may measure rehabilitation by the passage of time and an examination of behaviour pre- and post-offence. Rehabilitation does not mean there is no absolute risk of further criminal activity, only that the risk is minimal.

Applicants must demonstrate clearly that rehabilitation has taken place. Consider the likelihood they will commit further offences. Do not hesitate to refuse to recommend or approve an application, if the applicant is unable or unwilling to demonstrate that there is a low risk of recidivism.

Assess risk by looking at the factors outlined in IP 11, section 7.2. They include:

- Acceptance of responsibility for the offence.
- Remorse for any harm done.
- Restitution, where feasible, to victims.
- If drug/alcohol abuse or psychological disturbance contributed to commission of offences, completion of counselling or therapy. Does the person continue to drink and drive?
- Stability in employment and family life. Applicants who have been involved in a criminal lifestyle often exhibit instability in their lives. Participation in educational and skill training programs, steady employment and a positive family life may indicate a change in lifestyle.

Note: When you have examined a person who meets these guidelines and determined that you are prepared to grant them discretionary entry you have in effect decided that the person does not pose a risk of committing an offence in Canada and have rehabilitated themselves. You are encouraged to deal with them conclusively and grant them rehabilitation.

3. FEES

Applicable PROCESSING fees for approval of rehabilitation at a port of entry will be collected.

4. WHO CAN GRANT REHABILITATION

Currently the delegation is to the manager and those authorised to act in their absence.

IMMIGRATION

Canada^{🇨🇦}

Chapter PE 10

Senior Immigration Officer Functions at Ports of Entry



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FAX: 773-936-5000





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Senior Immigration Officer Functions at Ports of Entry

Abbreviations and Short Forms	
Act	<i>Immigration Act</i> , as amended
Charter	Canadian Charter of Rights and Freedoms
CIC	Canada Immigration Centre
CPO	Case Presenting Officer
Convention	United Nations 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees
CRDD	Convention Refugee Determination Division of the Immigration and Refugee Board
Customs	Revenue Canada, Customs, Excise and Taxation
FOSS	Field Operations Support System
IAD	Immigration Appeal Divisions of the Immigration and Refugee Board
IO	Immigration Officer
IRB	Immigration and Refugee Board
PIF	Personal Information Form
POE	Port of Entry
SIO	Senior Immigration Officer

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how a senior immigration officer exercises delegated authorities when examining persons seeking to come into Canada at a port of entry.

1.2 Policy intent

Canadian immigration policy aims for senior immigration officers (SIOs) exercising their delegated authorities are:

- to facilitate the entry of visitors into Canada for the purpose of fostering trade and commerce, tourism, cultural and scientific activities and international understanding
- to ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate in a manner inconsistent with the *Canadian Charter of Rights and Freedoms* (the *Charter*)
- to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted
- to foster the development of a strong and viable economy and the prosperity of all regions in Canada
- to maintain and protect the health, safety and good order of Canadian society, and
- to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity.

2. GUIDING PRINCIPLES

As an SIO at a port of entry (POE), you can exercise the authorities delegated to you when a person is the subject of a report under A20 alleging an inadmissibility under A19.

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, sections 20 and 19.

This chapter deals with each authority delegated to you in the order in which its use might arise at the POE.

Under A121 the Minister may also delegate to an immigration officer (IO) the authority to perform or carry out all the duties and functions of an SIO. For a list of these officers, see Instrument I-17.

In exercising your authorities as an SIO, you should be aware of certain guiding principles.

2.1 Procedural fairness

The principles of administrative fairness apply to your powers, as they do to the whole immigration process. You must provide persons or their counsel, where applicable, with the degree of participation in the process necessary to bring to your attention any facts or arguments of which you, as a fair-minded official, would need to be informed to reach a rational decision.

You are under a duty to act impartially: that is, as a disinterested decision-maker.

Decisions you make about eligibility and admissibility may be subject to judicial review, with leave, by the Federal Court of Canada (see section 13.4 below). Certain decisions you make may be subject to appeal to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB) (see sections 7.7 and 7.8 below).

It is important that you make notes detailing the process you follow in exercising your decision-making powers. You should complete Section 20 Highlights forms (IMM 5051) in as much detail as possible.

You should place on the file any additional notes detailing, for example, the presence and identity of counsel, circumstances relating to detention or release, and the basis for any decision you take.

In reaching your decisions, you must take into account any representations made by persons or by their counsel. Make particular note of the nature and content of any representations made.

2.2 The requirement for an interview

You will usually conduct face-to-face interviews. In circumstances where you are not readily available for a face-to-face interview, it may be appropriate to conduct an interview by telephone. If it becomes apparent during a telephone interview that you may make a negative decision, adjourn the telephone interview until you can make arrangements to conduct a personal interview. If the person has retained counsel in advance and has expressed the wish to have counsel present for the interview, either in person or by telephone, you should make attempts to accommodate this request.

2.3 Informing persons of allegations

You must inform persons of the nature of the allegations in reports against them at the earliest opportunity, and give them a reasonable opportunity to respond to those allegations. The same principle applies to determining eligibility to make a claim to the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board.

2.4 Burden of proof

The *standard of proof* in immigration matters is the balance of probabilities. You must determine whether the evidence on the whole shows that the facts in issue are more probable than not.

The *burden of proof* is the obligation to meet the requirement that the facts in issue be proven or not proven.

The burden of proof in eligibility determination rests with the person seeking access to the refugee determination system [A45(4)]. In the absence of conclusive evidence that the person concerned is ineligible, you should resolve eligibility in favour of the person.

The burden of proving that a person is entitled to come into Canada or may be admitted rests with that person [A8(1)]. While the burden of proof in port-of-entry cases rests with the person seeking admission, you must still ensure that your admissibility and eligibility decisions can be supported in fact and in law.

2.5 Duty to provide information

A person claiming at a POE that he or she should be allowed to come into or be admitted to Canada shall truthfully provide such information as you may require to establish that the person should be allowed to come into or be admitted to Canada, as the case may be [A23(4.1)].

The same obligation applies to persons claiming to be Convention refugees who are referred to you for a determination about eligibility [A45(5)].

These provisions of the Act are analogous to those concerning persons required to give information for the purpose of an examination under A12(4), and are provided to place the person concerned under a legal obligation.

Although there is no way of compelling persons to provide truthful information, knowingly providing false or misleading information is an offence under A94(1)(h.1).

2.6 Adjournments

An examination at the POE includes the review whereby an SIO determines whether a person should be granted entry or landing [A23(1), A23(2)], should be issued an exclusion order or a conditional departure order or should be allowed to leave Canada [A23(4), A28(1)], or should be referred for inquiry before an adjudicator [A23(4.2)].

Adjournment of your examination will rarely be necessary. *In exceptional circumstances* you may have to consider a request for adjournment to ensure that a person has a reasonable opportunity to provide more evidence. You may have to initiate adjournment for operational reasons, such as the lack of an interpreter. Do not use adjournment as a tool of administrative convenience. You should not consider a request for adjournment to furnish additional information unless all of the following conditions are met:

- there are strong indications that the person can easily produce additional documents relevant to the report or eligibility determination
- you find the person's indications to be credible, and
- the person has not yet been given a reasonable chance to present such documents.

You should keep in mind A23(3), which provides authority to detain, release and impose terms and conditions, including the imposition of a security deposit or the posting of a performance bond, on the adjournment of an examination of a person who is the subject of a report made under A20(1)(a). For further details on the application of A23(3), see section 8.1.1. below.

2.7 The right to counsel

You must inform a person of his or her right to retain and instruct counsel (at the person's expense):

- when you cause an inquiry to be held [A30]
- when you refer the person's case for a hearing before the CRDD [A69(1)], or
- when you detain the person [*Charter*, s. 10].

2.7.1. Counsel at examinations

For the purpose of an immigration examination, a person is not entitled to counsel unless formally detained [see *Dehghani v. Minister of Employment and Immigration*, SCC, File No. 22153, March 25, 1993].

Since a person awaiting examination by an IO or by an SIO is not considered to be detained, the right to retain and instruct counsel does not arise.

Despite not being entitled to counsel, persons may be allowed the assistance of counsel during an SIO review, as long as the person acting as counsel is ready and able to proceed immediately. Counsel may include a lawyer, a consultant, a family member and a friend.

2.7.2. Counsel after detention

You must give a person who is detained the full reasons for the detention, inform him or her without delay of the right to retain and instruct counsel for the purpose of reviewing the detention, and give the person a reasonable opportunity to exercise that right.

A reasonable opportunity would include, for example, providing access to a telephone and telephone directory (with an interpreter, if needed), and informing the person of the possibility of applying for legal aid that may be available in the applicable province.

2.8 Interpreters

You must be satisfied that the person concerned is able to understand and communicate in either of the official languages in which the proceeding is being held. If need be, the department will provide an interpreter to enable the person to understand and communicate with you fully. When the services of an interpreter cannot be obtained, you may adjourn on grounds of operational necessity.

2.9 Official Languages Act

Members of the public have a right to communicate with immigration employees in the official language of their choice, either French or English. The department will provide an SIO who speaks the official language requested by a person.

3. REVIEWING A20(1) REPORTS

When you receive a A20(1) report, you should first review the report for accuracy (see section 3.2 below) and then determine if the person who is the subject of the report is making a claim to be a Convention refugee.

If the person concerned has made a claim to be a Convention refugee, you should determine eligibility (see section 5. below) before you consider the decision alternatives available to you under the Act (see section 4. below).

3.1 Interviews

If your review of the A20 report is likely to result in a decision other than admission to Canada, always conduct a personal interview with the person who is the subject of the report.

3.2 Items to review

Review the A20(1) report to ensure that:

- the report is in writing
- the date and place of issuance are indicated
- the report is addressed to an SIO, and issued and signed by the IO who conducted the examination that resulted in the report
- the IO has correctly quoted the section or sections of the Act and its regulations
- the name of the person who is the subject of the report is complete and correctly spelled; abbreviations such as AKA (also known as) or s/o (son of) are not appropriate
- the report contains the grounds to support the allegation (for example: *He has been convicted in Canada of an offence, namely [the specific offence] at [place], on [date] for which a maximum term of imprisonment of ten years or more may be imposed*), and

3.3 Handling errors

If you find an error in an A20(1) report, you have two options:

- to return the report to the IO who wrote the report, explaining the error and requesting that the IO amend the report, or
- to add additional grounds of inadmissibility to the Notice of Inquiry Caused by a Senior Immigration Officer (form IMM 5246) (for information on how to do this, see section 6.2 below).

The following are examples of errors:

- the grounds cited in the report are not supportable in fact and law, but in your opinion the person concerned falls within some other inadmissible class, or
- an additional ground for inadmissibility exists which is not contained in the report.

If a report that was generated by *full-document* entry of the Field Operations Support System (FOSS) contains an error, and you generate a new report, delete the original report from the system.

Always provide a copy of the new or amended report to the person concerned, and explain the reason for any addition or alteration to the report.

4. DECISION CRITERIA FOR A20(1) REPORTS

4.1 Persons who may be allowed to come into Canada

After reviewing an A20(1) report made by an examining officer, you must determine which of the following options you should exercise.

You may allow a person who is the subject of an A20(1)(a) report to come into Canada if you are satisfied that the person:

- has a right to come into Canada
- is in possession of a subsisting permit
- has been issued a removal order and has been removed from or otherwise left Canada but has not been granted lawful permission to be in any other country, or
- is returning to Canada in accordance with a transfer order made under the *Mutual Legal Assistance in Criminal Matters Act*, and immediately before being transferred to a foreign state under the transfer order was subject to an unexecuted removal order [A14(1), A22].

4.2 Persons who may be granted landing

You have the authority to grant landing to an immigrant if you are satisfied that it would not be contrary to the Act or its regulations to grant landing [A23(1)(a)]. For information on landing procedures, see chapter PE 4, *Examining Immigrants*.

When you grant landing, you may impose such terms and conditions on an immigrant as are provided by the *Immigration Regulations* [A23(1.1); *Immigration Regulations*, ss. 23(1) and 23.1]. For information on imposing terms and conditions on immigrants, see chapter PE 4.

You have the authority to authorize an immigrant to come into Canada on condition that he or she be present for further examination by an IO within such time and at such place as you may direct [A23(1)(b)]. You have no authority to impose terms and conditions in these circumstances. For example, a family may arrive at the POE, but one of the family has forgotten or misplaced his or her passport. The family is admissible except for the absence of the passport. You may allow the immigrants to come into Canada pending the receipt of the passport. The landing would take place when the passport becomes available. For information on deferring landing, see chapter PE 4.

4.3 Persons who may be granted entry

When you receive an A20(1) report concerning a visitor, you have the authority to grant entry to that visitor, and to impose prescribed terms and conditions, if you are satisfied that it would not be contrary to the Act or its regulations to do so [A23(2)]. For further information see chapters PE 5, *Examining Students*; PE 6, *Examining Visitors*; and PE 7, *Examining Foreign Workers*.

You may require any visitor or group of visitors or organization arriving in Canada to deposit a reasonable sum of money or other security as a guarantee that the visitor or group or organization of visitors will comply with any terms and conditions that may be imposed under the Act [A18]. For further information, see section 9, below.

4.4 Persons who may be granted discretionary entry

If you consider that the person's purpose for seeking entry justifies admission, you may grant entry to a person who is inadmissible for one of the reasons set out in A19(2) for a period not exceeding 30 days [A19(3)]. When you grant discretionary entry, you may impose such terms and conditions on the person as you deem appropriate [A19(3)].

4.4.1. Discretionary authority

The authority conferred on you by A19(3) is discretionary. You must exercise this authority according to the dictates of your own judgement and uncontrolled by the judgement or conscience of others. You are mandated to protect the health and safety of Canadian society by preventing entry of those persons who are likely to engage in criminal activity while in Canada. You are not mandated to continue to punish those persons who although inadmissible are not likely to engage in criminal activity and who it is in public interest to admit. When exercising discretionary authority under A19(3), remember that:

- your authority must be exercised in good faith, for no improper or biased purpose
- you cannot delegate your authority to another person (this does not mean that you cannot request that an examining officer prepare the documents for your review)
- you cannot be ordered to exercise or not exercise your authority
- you must use your authority honestly and consistently: that is, based on evidence, facts, or information obtained to determine the merits of each particular case, and
- you should not use your authority automatically in accordance with a predetermined policy. Administrative fairness dictates that you must deal with each case on its own individual merits. For example, a POE should not set a predetermined policy that all persons convicted of one count of impaired driving will be granted discretionary entry.

4.4.2. Factors to consider

When you are exercising discretion under A19(3), you should consider the following factors:

- a) try to balance the reasons for inadmissibility against the reasons for which a person seeks entry. The more serious the alleged inadmissibility, the better should be the reasons for justifying entry. For example, a recent conviction for which a person might be found described under A19(2)(a) or A19(2)(a.1) is likely more serious than the lack of a document.
- b) avoid using A19(3) to overcome a recurring inadmissibility. For example, an inadmissible truck driver may be required to travel to Canada in the course of his or her duties; you should not issue discretionary entry each time the person seeks entry, but instead counsel the person on the requirements for rehabilitation or consider issuing a Minister's permit.
- c) do not use A19(3) to refer persons inland. For example, if a person who appears to be inadmissible wishes to enter Canada for three months, it would not be appropriate to grant discretionary entry for

30 days and advise the person to go to an immigration office inland to seek a Minister's permit. The correct action in such a case would be to consider whether you should issue a Minister's permit at the POE.

- d) consider whether compassionate or other pressing considerations warrant use of your A19(3) authority to allow entry or whether, in the circumstances, an inquiry would serve a useful purpose.
- e) you must be satisfied that the person seeking entry poses no threat or danger to the public. For example a person with a recent conviction for impaired driving who arrives by air with some friends to spend weekend in Montreal may be considered for 19(j) entry because the risk of committing an offence is minimized by the fact that the person will not be driving while in Canada. Due to economic benefits the public interest is served.

You should also consider:

- a) whether the person seeking admission is described in A19(2).
- b) the person's motive for seeking admission.
- c) the urgency of admission: why did the person fail to comply with the requirements? In circumstances where a person is genuinely unaware of the visa requirement, if the reason for seeking entry is of such an urgent nature as to preclude obtaining a visa, or if the decision to enter Canada is spontaneous, it may be appropriate to use A19(3). For example, friends or relatives of a visitor to the U.S. decide to enter Canada from Niagara Falls, N.Y. to see the Canadian falls, and the U.S. visitor meets all requirements for entry, including re-admissibility to the U.S., but is not in possession of a Canadian visa. If you were satisfied that the decision to enter Canada was spontaneous, you might wish to use A19(3) to allow entry. If you formed the opinion that the person seeking entry simply ignored visa requirements, or had plenty of time to obtain a visa, you might decide not to use A19(3) to authorize entry.
- d) whether the purpose for which the person is seeking entry can be accomplished within the 30-day time limit allowed.
- e) the extent to which the inadmissibility can be attributed to neglect or bad faith on the part of the person seeking admission. For instance, in a criminal case consider the date of conviction compared to the date on which the person is seeking entry. Is the conviction recent, or might the person be eligible for relief from the inadmissibility?
- f) whether the person seeking entry is likely to leave Canada should discretionary entry be granted. Remember that removal costs become the liability of the department once entry is granted.
- g) whether the person appears in the Enforcement Information Index in FOSS.
- h) the recommendation of the examining officer.

Note that although A19(2)(d) is broadly worded, it refers only to those persons who do not fulfil or comply with any of the conditions or requirements of the Act or its regulations. It does not refer to persons who fall within the inadmissible classes described in A19(1).

4.4.3. Decisions

Once you have made a determination that the person is eligible for discretionary entry, you must inform the person that he or she is eligible for discretionary entry and that there is a processing fee for this service, if the person wishes to take advantage of his or her eligibility. After the person pays the fee you may issue a document.

4.4.4. Documentation

You must document persons granted entry under A19(3) on a Visitor Authorization form (IMM 1097). For further information on completing an IMM 1097, see chapter PE 6, *Examining Visitors*. For assistance in coding the IMM 1097 for an A19(3) case, consult the Visitor Document Section of the Immigration Coding Handbook (IH manual).

4.4.5. Terms and conditions

You can impose terms and conditions that you believe are appropriate, including a condition requiring that departure from Canada be verified. For example, if you allow entry to a person who will be working in Canada, you can impose a condition that the person may work only in a specific position and only with the employer named on the Visitor Authorization (IMM 1097).

4.4.6. Counselling

You should counsel a person whom you admit under A19(3):

- about the period for which he or she has been admitted to Canada (the maximum period possible under A19(3) is 30 days)
- that A19(3) entry cannot be extended for any reason
- about the meaning of any terms and conditions imposed and the consequences of breach, and
- about procedures the person should follow to overcome the particular inadmissibility (for example, how to obtain the proper authorization, apply for immigrant status, obtain a visa or apply for rehabilitation).

4.5 Persons allowed to leave

You should consider whether a person who is the subject of a report under A20(1) should be allowed to leave Canada, taking into account the factors that an IO would consider to make the same decision. To review these factors, see section 4 of chapter PE 9, *A20 Reports, Voluntary Withdrawal and Directions to Return to the U.S.*

If you are satisfied that a person is willing and able to leave, allow the person to leave unless you are satisfied that there is evidence of inadmissibility of a permanent (incurable) nature.

You should bear in mind that the Act does not provide for the detention of persons who have been allowed to leave Canada under A20(1)(b), A23(4) or A23(4.2)(b) or who have been issued a rejection order under A13. The phrase "subject to subsections (4), (4.2) and (6)" in A23(3) means that the power to detain does not extend to situations where the SIO has allowed the person concerned to leave Canada.

Subsections 23(6) and 103(7) of the Act are very clear as to who can be detained and for what purpose. A23(6) states that:

- no person shall be detained or ordered detained under A23(3)(a), and
- any person detained under A20(1) shall be released from detention by a SIO unless there are reasonable grounds to believe that the person poses a danger to the public or would not appear for an examination or inquiry.

An SIO must review any detention under A20(1), and the SIO must release the person unless there are reasonable grounds to believe that the person poses a danger to the public or would not appear for an examination or inquiry. Subsection 103(7) of the Act also requires that an adjudicator release a person unless the person poses a danger to the public or would not appear for examination, removal or inquiry.

Given the restrictions on the ability of the SIO to order detention under section 23, it would appear that a person should only be allowed to leave Canada if you are of the opinion that the person will leave forthwith and he or she does not constitute a danger to the public. If it appears to you that the person will not be able to leave Canada forthwith (and a long wait for transportation may indicate that this is the case) then you should consider causing an inquiry or issuing an exclusion order as circumstances dictate.

Once an inquiry has been caused, A23(3)(a) allows detention pending inquiry. In these circumstances, withdrawal prior to inquiry may be allowed by either you or the CPO. Once an exclusion order has been issued, detention may be ordered under A103(3.1)(b).

4.5.1. Persons generally allowed to leave

You should generally allow a person to leave:

- to overcome an inadmissibility, such as failing to apply for and receive an employment authorization before arriving at a POE, as required by the *Immigration Regulations*, or failing to present a valid passport, and
- if it appears that the circumstances of the inadmissibility were unintentional:

4.5.2. Persons not generally allowed to leave

You should not generally allow a person to leave:

- if the alleged inadmissibility is based on serious criminality, or
- if you believe the person will withdraw, only to seek entry at another POE. You should not interpret this to mean that persons who are inadmissible on technical grounds (such as no visa or passport) should be taken to inquiry because they might drive to the next POE. Rather it is intended for the individual who is statutorily inadmissible because of criminality or some other serious reason, and who continually tries to seek entry without seeking to overcome this inadmissibility: for example, a person who is eligible to request consent of the Minister, has been given the proper instructions, but has chosen to ignore them and continually seeks entry.

4.5.3. Counselling

Counsel a person who may wish to withdraw voluntarily from Canada about:

- the reason for the inadmissibility
- the basis of your decision
- how to overcome the inadmissibility, and
- the possible consequences of repeated attempts to enter Canada without overcoming the inadmissibility (such as the possible results of inquiry, detention, and so forth).

4.5.4. Documentation

If a person does not wish to withdraw voluntarily, continue your review.

If you allow a person to withdraw voluntarily from Canada, complete and issue an Allowed to Leave Canada form (IMM 1282; see APPENDIX A) on FOSS, entering the appropriate FOSS cause codes.

The cause codes are indicators for monitoring the use of withdrawal and for identifying cases that can be deleted from the system after a period of time.

If FOSS is not available, complete the IMM 1282 by hand and enter the document electronically using *status entry* when FOSS becomes available. Canada Immigration Centres (CICs) should retain file copies locally for one year.

4.6 Persons not allowed to come into Canada

If you have determined that the person who is the subject of an A20(1) report cannot be admitted or allowed to come into Canada and cannot be allowed to leave Canada, you must:

- determine the person's eligibility to make a claim to Convention refugee status (when necessary)
and
- make an exclusion order
or
- make a conditional departure order
or
- cause an inquiry to be held.

For information on making exclusion orders and conditional departure orders, and causing inquiries, see section 7. below.

If you adjourn an examination of a person who is the subject of an A20(1)(a) report, or if you do not let the person come into Canada under A22, or if you do not grant admission or otherwise authorize a person to come into Canada, subject to A23(4), A23(4.2) and A23(6) you may:

- detain or make an order to detain
- release from detention, subject to terms and conditions or security, or require the posting of a performance bond, and
- impose such terms and conditions as you deem appropriate, including the posting of a security deposit or the posting of a performance bond [A23(3)].

5. DETERMINING ELIGIBILITY

5.1 Your jurisdiction

A person may make a claim to be a Convention refugee at any time throughout the administrative or inquiry process before the making of an order [A44(1)]. Wherever the claim occurs, the eligibility determination is exclusively your function.

An immigration officer receiving a claim to be a Convention refugee will immediately refer the claim to an SIO [A44(2)].

If you receive a Convention refugee claim, you must determine whether the person making the claim is eligible to be referred to the CRDD [A45], except for cases involving certain allegations of criminality where you may not determine eligibility until an adjudicator first makes a finding on the allegation [A45(2)].

5.2 Field Operations Support System (FOSS)

FOSS assists the process for determining eligibility and referring claimants to the CRDD. You should refer to the FOSS Reference Guide for Bill C-86 implementation.

5.3 Multiple claims

When a person makes more than one claim to be a Convention refugee, those claims shall be deemed to be one claim for the purposes of the Act [A44(5)]. The general principle is that a person who has been previously found eligible and referred to the CRDD will be allowed to pursue the claim *without* another eligibility determination. When you receive a multiple claim, follow these procedures:

- a) If the person arrives at a POE before the original CRDD hearing date:
 - write a new A20(1) report. If new allegations fall outside your jurisdiction, cause an inquiry before an adjudicator.
 - make a conditional departure order and consider detention, release and terms and conditions. Do *not* refer the case to the CRDD again. Counsel the person to report for the original CRDD hearing date.
 - if you think that the person's absence from Canada may affect the outcome of the CRDD hearing, inform the regional appeals office. The appeals office may wish to advise the Minister to participate at the CRDD hearing, particularly in cases where a person leaves Canada and returns to the country of persecution [see A69.1(10.1)].
- b) If the person arrives at a POE after the scheduled CRDD hearing date:
 - write a new A20(1) report. If new allegations fall outside your jurisdiction, cause an inquiry before an adjudicator.
 - check FOSS to determine whether the CRDD has declared the previous claim to be abandoned. If the information on FOSS is not conclusive, contact the CRDD to clarify the status of the previous claim.

- if the CRDD has declared the claim abandoned:
 - conduct an eligibility determination under A46.01(1). If the person has returned to Canada within 90 days since last coming into Canada, the person is not eligible. Proceed to make an exclusion order.
 - if the person returns after 90 days, consider the matter as a new claim and determine eligibility in accordance with procedures.
- c) if the CRDD has not declared the claim abandoned, do not determine eligibility. Allow the person to pursue the claim. Make a conditional departure order and take the steps in the first procedure of section 5.3 above.

Where multiple claims have been made and more than one conditional order has been made, all such orders become effective simultaneously.

5.4 Who is not eligible?

The Act provides six grounds on which you must find that a claim is not eligible for determination by the CRDD [A46.01]:

- a) A person who has been recognized as a Convention refugee by any country other than Canada and can be returned to that country [A46.01(1)(a)]
 - i) Persons who have prior protection as refugees are not eligible for determination by the CRDD if they can be returned to the country of first asylum.
 - ii) First, you must be satisfied that the person was granted refugee status under the Convention. A person may be in possession of an identity or travel document stating that he or she has been granted refugee status in the issuing country. Some countries grant temporary refugee status or asylum that does not necessarily comply with the requirements of the Convention.
 - iii) Second, you must consider whether or not the person can be returned to his or her country of asylum under A46.01(1)(a). You need not address whether the person can be *physically* returned to the country granting asylum, because this factor is relevant only in an assessment under A53 and not A46.01(1)(a). What you must consider is whether the person would be allowed by the country granting asylum to return to that country: whether the person has the legal ability to return, as demonstrated by the possession of adequate travel documents or proof of status and the absence of evidence that the country granting asylum will not accept the person, if returned.
 - iv) You are not required to adjourn an examination to obtain evidence to determine returnability, unless the evidence is easily attainable or readily available. As a general principle, if there is insufficient evidence to find the person ineligible, then you must refer the person to the CRDD. If there is tangible, easily available evidence that the person concerned can be returned to the country of asylum, then the person is ineligible. For example, consider the case of a person in possession of a travel document issued under Article 28 of the Convention by the country granting asylum. In determining whether the person can be returned, as a minimum you should consider the following factors:
 - the validity of the document

- visa requirements for readmission to the country of asylum, and
 - whether the country of asylum will grant readmission.
- v) Remember that if a person claims a fear of persecution in the country that granted asylum, he or she is ineligible under A46.01(1)(a). For example, if a citizen of El Salvador who is recognized as a Convention refugee by Peru, and who is travelling with a valid Article 28 refugee travel document indicating that he or she is readmissible to Peru, claims against both El Salvador and Peru, the person is ineligible. A determination as to actual removal will be made under A53(1).

A more difficult dilemma is posed by the case of a person who possesses no documentary proof, but verbally declares that he or she has been recognized as a Convention refugee and expresses no fear of returning to the country granting asylum. In these circumstances, if you cannot ascertain easily and within a reasonable period of time that the person can be returned, then you should find the person eligible. A reasonable period of time, in this context, means within hours but never beyond a few days. For example:

- if the country granting asylum confirms that the person can return, then the person is ineligible
- if the country granting asylum denies having granted Convention refugee status to the person, then the person is eligible, and
- if the country granting asylum confirms having granted Convention refugee status but is unclear whether the person is entitled to return (that is, it is reasonable to believe that the person needs specific documentation to return and the person is not in possession of such documentation), then you should consider the person eligible.

Note that if a person you found ineligible because of A46.01(1)(a) expresses no fear of returning to the country granting asylum, it is not necessary to refer the matter to Regional Headquarters for an A53(1) assessment.

- vi) If you find a person to have been recognized as a Convention refugee, and the person claims that he or she fears persecution in the recognizing country, A53(1) applies. The person must not be removed prior to an assessment under A53(1). Follow these procedures:
- issue a negative eligibility document, using FOSS (see the FOSS Reference Guide for Bill C-86).
 - make an effective removal order, refer the person to inquiry or allow the person to leave.
 - have the claimant make a detailed declaration about the circumstances of the granting of refugee status in the asylum country, and the reasons for the alleged fear of persecution in that country. Use a standard statutory declaration form. If necessary, have the declaration translated for the claimant before you and the claimant sign it. If you use the services of an interpreter, ensure that the interpreter declaration is completed.

- consider whether the person should be released or detained. If released, impose terms and conditions that include requiring the person to report, according to regional guidelines, at a specific time and place, where the claimant will be told whether an entitlement to protection under A53 exists.
- deliver a copy of the declaration and a copy of all relevant information in the file *immediately* to the appropriate regional office. The regional office will relay a decision to the person according to regional guidelines and the file will be processed accordingly.
- persons requesting an opportunity to submit an amended declaration may do so. Retain the original declaration.

- b) A person who came to Canada directly or indirectly from a country referred to in A46.01(1)(b)

Note: the paragraphs in this second ground of section 5.4 will be inoperative until a list of countries is prescribed. APPENDIX P is reserved for a list of countries prescribed under A114(1)(s).

A46.01(1)(b) refers to a country, other than the country of a person's nationality or, where a person has no country of nationality, the country of a person's habitual residence, that is a prescribed country under A114(1)(s).

A114(1)(s) stipulates that the Governor in Council may make regulations prescribing countries that comply with Article 33 of the Convention for the purpose of sharing responsibility for the examination of persons who claim to be Convention refugees.

A person may have come to Canada directly or indirectly through a country which shares responsibility for the examination of persons who claim to be Convention refugees, and which complies with Article 33 of the Convention. This person is not eligible for determination of a claim in Canada, because the person could avail himself or herself of protection as a Convention refugee in that country before arriving in Canada, and because the person is assured that the country will deal with his or her claim on return to that country.

Subject to any agreement entered into under A108.1, persons who are in a country solely for the purpose of joining a connecting flight to Canada are not considered to have come to Canada from that country [A46.01(3)(a)].

Persons who come to Canada from a country are considered as coming to Canada from that country whether or not they were lawfully in that country [A46.01(3)(b)].

The Minister may suspend the operation of A46.01(1)(b) for specific periods or for specific classes. In cases where removal under this provision is unsuccessful, please see section 5.6 below [A46.03(1)].

- c) A person who has, since last coming into Canada, been determined by the CRDD not to be a Convention refugee, or to have abandoned the claim, or has been determined by an SIO not to be eligible to have a claim determined by the CRDD [A46.01(1)(c)]

For the purpose of eligibility under A46.01(1)(c), if a person goes to another country and returns to Canada within 90 days, do not consider the person as coming into Canada on that return [A46.01(5)]. This provision prevents someone from making repeated claims to be a Convention refugee.

To determine the day a person last came to Canada, do not include the day the person left Canada as part of the 90-day period outside Canada. A person who came to Canada on the 91st day following the day of departure and made a claim would be eligible to have a new claim determined [*Berrahma v. Minister of Employment and Immigration*, FCA, Doc. No. A-759-90, February 21, 1991].

- d) A person who has been determined under the Act or its regulations to be a Convention refugee [A46.01(1)(d)]

Persons whose claims have already been determined in Canada are not eligible, because they have already been determined to be Convention refugees.

A46.01(1)(d) includes persons accorded Convention refugee status by Canadian visa officers abroad in accordance with s. 7 of the *Immigration Regulations*, as persons previously found to be Convention refugees under the Act.

Persons found ineligible under this paragraph have a right of appeal to the IAD, and a stay of removal may be applicable (see section 7.7 below).

Under no circumstance should a person found ineligible under this paragraph be removed without an assessment under A53(1) (see item 1 above for procedures to follow when an A53(1) assessment is required).

- e) A person whom an adjudicator has determined to be a person described in A19(1)(c) or A19(1)(c.1)(i), and whom the Minister believes to be a danger to the public in Canada; or a person described in A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l), and whose claim the Minister believes it would be contrary to the public interest to have determined under the Act

Under the terms of the Convention, a country is not obliged to provide protection where the person poses a danger to security and public order. Accordingly, persons who constitute such a danger are not eligible for a determination of their claim in Canada.

If you receive a report containing any of the allegations in this section, or if you believe on reasonable grounds that a person could be described under one of those allegations, you must cause an inquiry before an adjudicator as soon as practicable. You cannot determine eligibility until an adjudicator decides on the allegation.

You must find the person not eligible if the adjudicator finds:

- that the person is described in the allegation under A19(1)(c) or A19(1)(c.1)(i), and if you are provided with the Minister's opinion that the person constitutes a danger to the public in Canada [A46.01(e)(i)], or
- that the person is described in A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l), and if you are provided with the Minister's opinion that it would be contrary to the public interest to have the claim determined in Canada [A46.01(e)(ii)].

APPENDIX B explains how to obtain the opinion of the Minister.

- f) A person who has previously been determined not to have a credible basis for a claim to be a Convention refugee

A person who claimed to be a Convention refugee before February 1, 1993, who was found not to have a credible basis for a claim, and who was issued a departure notice but failed to comply with that

5.5 Ministerial intervention

notice and did not leave Canada, is ineligible [A46.01(1.1)]. *Paragraphs (a), (b) and (c) of A46.01(1.1) must be read together, not separately.* This provision ensures that such a person does not have repeated access to the refugee determination system.

The Minister has the right to be represented before the CRDD to present evidence concerning a determination [A69.1(5)], and if the CRDD considers it appropriate, is allowed to question the claimant or any other witnesses and to make representations concerning the claim. The Minister does not usually exercise this right. Questioning witnesses and making representations at CRDD hearings is primarily the role of the refugee hearing officer [A68.1].

When you refer a person who has made a claim to be a Convention refugee to the CRDD for a hearing [A46.02 or A46.03], the Minister is entitled to request in writing that the CRDD provide the Minister with a copy of the Personal Information Form (PIF) [A69.1(2)].

You must make a ministerial request *at the time of referral to the CRDD*: that is, at the time eligibility is determined [A69.1(2)]. You make the request by completing the *request* field in the *eligibility* screen of the FOSS refugee module. The IRB will then forward the information to the appropriate regional appeals office.

The regional appeals office will review the PIF to determine whether the Minister should intervene. Appeals officers represent the Minister at interventions before the CRDD and may present evidence on behalf of the Minister [A69(1)].

If you make a request for ministerial intervention and the Minister is of the opinion that matters involving either the exclusion clauses (sections E or F of Article 1 of the Convention) [A2(1)] or cessation clause [A2(2)] are in issue, the appeals officer may:

- present evidence
- question the person making the claim and any witnesses, and
- make representations concerning the disposition of the claim [A69.1(5)(a)].

If you make a request for intervention for reasons other than exclusion or cessation, the CRDD may, *in its discretion*, allow the appeals officer to appear at the CRDD hearing for any or all of the purposes just described [A69.1(5)(b)].

Normally, SIOs request PIFs only in exceptional cases, as a result of instructions by Regional or National Headquarters.

A request under A69.1(2) may be appropriate in the following circumstances:

- if you believe that a case falls within section E of Article 1 of the Convention: that is, that the person is not considered to be in need of international protection because the person has taken up residence in a country which has afforded to the person the rights and obligations attached to nationals of that country
- if you believe that a case falls within section F of Article 1 of the Convention: that is, war crimes, crimes against humanity, serious non-political crimes or acts contrary to the purposes of the United Nations, and

5.6 Referring a claim to the CRDD

- cases of more serious criminality, cases that attract the attention of the news media because of their controversial nature, and cases that could affect the security of Canada or its relationship to other countries.

You must have concrete and relevant evidence to justify requesting the PIF at the time of referral. If you are in any doubt about the appropriateness of a request for ministerial intervention, you should consult your supervisor, who in turn may wish to contact the regional appeals office or the National Headquarters appeals unit for guidance.

Use the following procedures in conjunction with those for determining eligibility and making administrative removal orders.

If you determine a person to be eligible, refer the claim to the CRDD according to rule 6 of the *Convention Refugee Determination Division Rules*, using the procedures below.

Whether your determination is positive or negative, you must advise the person of your determination in writing [A45(3)].

Generate the required Determination of Eligibility form from FOSS.

If your determination was negative, the FOSS-generated Determination of Eligibility form will indicate the basis for your decision [A45(3)]. The basis for your decision will be one of the six disqualifications listed in section 5.4 of this chapter.

You can use the FOSS *remarks* section to add further details, such as the date and file reference of a previous negative credible-basis decision, the country prescribed by regulation made under A114(1)(s) from which a person came to Canada and made a claim to be a Convention refugee, and the details of previous recognition as a Convention refugee by another country.

If your determination was positive, you must issue a FOSS-generated IRB Notice to Appear form, directing the claimant to appear before the CRDD at a specific time and date, and a Referral to the CRDD form. This involves three actions.

- a) use FOSS to forward the following information to the registry designated by the CRDD:
 - i) your determination of eligibility
 - ii) the section of the Act under which you are referring the claim
 - iii) the name, sex, date of birth and citizenship of the claimant
 - iv) if available, the address and telephone number of the principal claimant in Canada
 - v) if available, the name, address and telephone number of the counsel of the principal claimant
 - vi) the country or countries in respect of which the claimant fears persecution
 - vii) the official language chosen by the claimant and, where applicable, the language or dialect of the interpreter required by the claimant
 - viii) if applicable, the location of detention of the claimant
 - ix) if applicable, the names of the family members of the claimant whose claims have been referred to the CRDD, and the FOSS client identification number relating to those family members

- x) whether or not the Minister has requested the PIF under A69.1(2)
- xi) the date on which you referred the claim
- xii) your name
- xiii) the FOSS identification number of the claim, and
- xiv) the date and method of service by which you gave the claimant the form (the PIF) that sets out the information required from the claimant under rule 14(1) of the *CRDD Rules*.
- b) serve the claimant with the IRB information kit that the claimant must complete under rule 14(1) of the *CRDD Rules*, which sets out in detail the information required for refugee claimants by the IRB. Include the claimant's FOSS identification number in the space provided in the kit.
- c) forward by mail to the CRDD a copy of any identity and travel documents of the claimant that are in your possession. Include the FOSS identification number.

If FOSS transmission is temporarily unavailable, take the following steps:

- complete the Determination of Eligibility and Referral to the CRDD (form IMM 5239) manually and give the claimant the appropriate copy.
- manually complete and issue the IRB Notice to Appear. The date and time for appearance before the CRDD is to be the next business day which is eight weeks from the date of issue of the notice, at 8:30 a.m.
- handwrite the address of the appropriate IRB office on the notice. For Ontario cases, the appropriate IRB office will be based on the IRB country list (contact your Regional office for a current list).
- provide the claimant with a copy of the Notice to Appear, retain a copy for the client file and have the pink copy of the notice sent by mail to the appropriate IRB office.
- provide the claimant with an IRB refugee kit and enter the FOSS client identification number on the kit in the space provided.
- complete a manual claim referral form (IMM 5243) to obtain the information required to comply with rule 6 of the *CRDD Rules*.
- update FOSS as soon as possible so that information on the IMM 5243 can be transmitted to the IRB electronically. If this cannot be accomplished within two business days, send the IMM 5243 to the IRB by courier or, if possible, use a FOSS terminal at another CIC to complete electronic transmission. This procedure applies to Newfoundland, except that for claimants who are not remaining in Newfoundland, ascertain the claimant's intended destination and forward the information to the IRB office appropriate to the claimant's destination.

5.7 Referring ineligible persons to the CRDD

If you determine a person not to be eligible and make a removal order, there are three circumstances where you will refer the claim to the CRDD anyway [A46.02]. These circumstances, which all arise after a person has been found not to be eligible under A46.01(1)(b), affect:

- persons who cannot be removed from Canada to a country prescribed under A114(1)(s)

- persons who, having been removed from Canada, are allowed to come into Canada under A14(1)(c), and
- persons who, having been allowed to leave voluntarily, have not been permitted to enter the country from which they came to Canada and are allowed to come into Canada under A14(1)(c) [A46.03(1)].

To refer persons to the CRDD for these reasons, follow these procedures:

- complete the *eligibility results and referral* screen in FOSS. Enter a *Y* in the 46.03(1) field.
- use option *PF* to generate the ineligibility document and the Referral to CRDD under A46.03(1) document. FOSS will also generate a Notice to Appear document at this time.
- give the person the correct copy of each form and retain the remaining copies on file. Do *not* send a copy of the Referral to CRDD under A46.03(1) form to National Headquarters for microfilming.
- when FOSS is unavailable, complete a handwritten Referral to CRDD under A46.03(1) document (form IMM 5240). Complete the Notice to Appear document by hand.
- when FOSS becomes available, complete the *eligibility results and referral* screen and complete the *documentation issue date* field.

For addresses and telephone and facsimile numbers of the IRB registries and offices in Canada, see APPENDIX C.

6. DETERMINING ADMISSIBILITY

The Act, as amended, now allows you to make a determination that a person is described in certain reports, and to make the administrative removal order required by the Act.

You may make three types of administrative orders: an exclusion order, a departure order and a conditional departure order.

6.1 Your jurisdiction

At POEs, you deal solely with the admissibility to Canada of the following persons who do not claim to be Canadian citizens or permanent residents of Canada:

- persons who seek to come into Canada without having first obtained the consent of the Minister, where required by the Act [A19(1)(i), A55], and
- persons who are not in possession of a valid and subsisting passport, visa or student or employment authorization [A19(2)(d), A9(1), A10; *Immigration Regulations*, ss. 13(4), 14(1), 14(3)] and who are not persons to whom a document was provided under A10.3.

If information comes to your attention that a person is a member of an inadmissible class of persons referred to in A32(5)(a), you cannot assume jurisdiction even though such an allegation is not included in the report referred to you by the examining officer.

If the IO's report contains one or more allegations that are not within your jurisdiction, you are not authorized to deal with *any* of the allegations contained in the report [A23(4)].

6.2 Considering A19(2)(d) and A19(1)(i) reports

- a) Determine whether the person concerned:
 - i) may come into Canada under A14(1) [A22]
 - ii) should be granted entry or landing into Canada under A23(1), A23(2) or A19(3)
 - iii) should be issued a Minister's permit [A37]
 - iv) shall be allowed to leave Canada forthwith [A23(4) and A23(4.2)(b)]
 - v) shall be excluded from Canada [A23(4)], or issued a conditional departure order if you find the person concerned eligible to have a claim determined by the CRDD [A28(1), A45]
 - vi) shall be directed to an inquiry [A23(4.2)], or directed back to the USA until an adjudicator is available [A23(5)], or
 - vii) shall be detained, issued terms and conditions, or released with or without terms and conditions pending an examination, inquiry or removal [A23(3), A23(6), A103(3.1)].
- b) In a case where you do not make an exclusion order or a conditional departure order, you must cause an inquiry to be held as soon as is reasonably practicable, or allow the person to leave Canada forthwith, unless the person is alleged to be described in A19(1)(k) [A23(4.2)]. If

the person is alleged to be described in A19(1)(k), you must not cause an inquiry to be held unless the required security certificate is issued [A23(4.3)]. For further information on evidentiary requirements for reports under A19(1)(k), see chapter PE 9, *A20 Reports, Voluntary Withdrawal and Directions to Return to the U.S.*

- c) If a person has been previously deported for criminality and is still inadmissible by reason of those same grounds, the IO is required to report the person for those grounds and A19(1)(i) and any new grounds of inadmissibility. In these circumstances the person falls under A23(4)(a), in that an adjudicator would be required to issue a deportation order under A32(5)(a). Thus the case is beyond your jurisdiction.
- d) If you believe that a person is a member of an inadmissible class of persons referred to in A32(5)(a), or a report contains allegations that are not within your jurisdiction, you must refer the person to an inquiry or allow the person to leave Canada forthwith. If you cause an inquiry, follow these procedures:
 - i) complete the Notice of Inquiry Caused by a Senior Immigration Officer (form IMM 5246)
 - ii) ensure that any allegations not appearing in the report, but which you wish the adjudicator to consider at inquiry, are included in the notice of inquiry (if it is not possible to have the report amended or rewritten by the IO)
 - iii) explain to the person the nature of the allegations that you are adding to the notice of inquiry, and the basis on which you have decided to add the allegations
 - iv) make a notation on the file that you have put the person on notice for allegations which are not contained in the A20(1) report, and
 - v) ensure that detailed notes supporting the additional allegations, together with any supporting evidence, are retained on the file. Write a memo for the case presenting officer (CPO) detailing the additional allegations and explaining the circumstances under which they arose.

7. MAKING ADMINISTRATIVE REMOVAL ORDERS

You are authorized to make administrative removal orders at POEs [A23(4), A28]. These provisions allow you to resolve uncomplicated cases of inadmissibility at POEs.

7.1 Exclusion orders

You can make exclusion orders only in cases involving A20(1) reports, and when the following circumstances exist:

- when you have determined that a person is inadmissible to Canada for one or more of the grounds mentioned in A23(4), but no others
- when you have not allowed a person to leave Canada [A23(4)], and
- when you have not referred a claim to be a Convention refugee to the CRDD [A45(1)]. This circumstance could arise either because no claim was referred to you, or because you received a claim to be a Convention refugee and determined the claimant to be ineligible for referral to the CRDD.

An exclusion order is an effective order. A person who is subject to an exclusion order must leave Canada. After the person is removed from or otherwise leaves Canada, that person must not come into Canada without the written consent of the Minister during the 12-month period immediately following the day on which the person is removed from or otherwise leaves Canada, unless an appeal from the order has been allowed.

The 12-month exclusion rule following removal does not apply to a person who returns to Canada seeking admission within 12 months of having made a claim to Convention refugee status and having received an exclusion order [A55(2)].

7.2 Stay provision and exceptions

The removal of a person who has been determined to be ineligible to have a claim to be a Convention refugee referred to the CRDD is stayed until seven days have elapsed from the time the order was made or becomes effective, whichever is later, unless the subject of the order agrees that removal may be effected before the period expires [A49(1)(e)], or unless the person has a right of appeal to the IAD, in which case the removal is stayed, on request, until the time allowed to file the appeal [A49(1)(a)].

You may encounter two circumstances in which there is no stay and removal is immediate. These are:

- when you make an effective removal order against a person residing or sojourning in the U.S.A. or St. Pierre and Miquelon [for the meaning of "sojourning", see *El Jechi v. Minister of Employment and Immigration*, [1988] 8 Imm. L.R. (2nd) 64, 25 F.T.R. 196 (F.C.T.D.)], and
- when you have determined that a person is not eligible to have a claim referred to the CRDD by reason of A46.01(b), and that person is to be removed to a country with which the Minister has entered into an agreement under A108.1 concerning the sharing of responsibility for examining refugee claims.

7.3 Conditional departure orders

You can make a conditional departure order if you determine a person to be eligible to have a claim referred to the CRDD, and if the person would otherwise have been the subject of an exclusion order [A28(1)].

7.4 When conditional orders become effective

Exclusion orders, departure orders and deportation orders are effective the day they are made unless, in the case of departure orders and deportation orders, they are conditional orders.

Under A28(2) and A32.1(6), conditional orders only become effective when:

- the claimant withdraws his or her refugee claim
- you have found the claimant not to be eligible to make a refugee claim, and you have so notified the claimant
- the CRDD has declared the claim to have been abandoned and the claimant has been so notified
- the CRDD has determined that the claimant is not a Convention refugee and the claimant has been so notified, or
- you have determined [A46.07(1.1)] or an adjudicator has determined [A46.07(2)] that the claimant does not to have a right under A4(2) to remain in Canada [A28(2), A32.1(6)].

Subsection 2(4) of the Act provides methods for determining when a person has been notified of a decision made under the Act.

Persons are *deemed to be notified* of a decision (other than a decision of a visa officer) under the Act, if:

- the decision was not given in the presence of the person and the person was not entitled to written reasons, on the day that is seven days after the day on which notice of the decision was sent to the person [A2(4)(a)], and
- the person was entitled to written reasons, or was entitled to request written reasons and did so, on the day that is seven days after the written reasons were sent to the person [A2(4)(b)].

Notices or written reasons may be sent by mail.

7.5 Certificates of departure

A person who is the subject of an effective departure order is to attend or be brought before an IO, so that the officer can verify the person's departure from Canada and issue a certificate of departure [A32.01].

If no certificate of departure is issued within the time specified in s. 27 of the *Immigration Regulations*, the departure order is *deemed to be a deportation order* against the person [A32.02(1)].

If a person is no longer in Canada and has not been issued a certificate of departure in accordance with the Act, the person will be *deemed to be deported*, despite the fact that departure from Canada has been effected.

In three circumstances, persons who are subject to departure orders may reapply to come into Canada at any time without the permission of the Minister, providing the requirements of the Act and its regulations are otherwise met. These are:

- a person who has been issued a certificate of departure, and who leaves Canada voluntarily before the expiration of the applicable period

7.6 Completing orders

- a person who is removed from Canada before the expiration of that period [A55(3)], and who has been issued a certificate of departure, and
- a person who has been detained under the Act and is still in detention at the expiration of the period as specified in s. 27 of the *Immigration Regulations* [A32.02(3), A55(3)(b)].

Remember that any removal order that you make may be the subject of judicial review by the Federal Court of Canada. It is important that you complete these documents fully and accurately.

Removal orders will normally be generated by *full-document* entry in FOSS. If FOSS is temporarily unavailable, follow these procedures:

- a) complete the Exclusion Order (form IMM 1214) or the Departure Order and Conditional Departure Order (form IMM 5238) by typewriter wherever possible.
- b) ensure that the subject's name is spelled correctly.
- c) complete the subject's date of birth in the format indicated on the form.
- d) insert the applicable country name in the *country of birth* and *country of citizenship* fields. Do *not* use country codes.
- e) use the allegation wording found in Immigration FOSS III – Removal Cause to complete the allegation section in the order.
- f) check off the box on the IMM 5238 indicating whether it is a departure order or a conditional departure order.
- g) sign and date the document.
- h) ensure that the order is interpreted and the interpreter declaration completed and signed, if appropriate.
- i) ask the subject of the order, if present, to sign and date the order indicating receipt of a copy. If the subject refuses to sign, make the notation *refused to sign* in the space reserved for the subject's signature.
- j) complete the *date delivered* and *delivered by* (mail or in person) fields in all cases. If the subject of the order is present and receives a copy of the order, the *date delivered* is the effective date of the exclusion or departure order. If the subject of the order is not present, the *date delivered* is the date the order is mailed and will always be the same as or later than the *date signed*. Remember that the subject of the order is deemed to have been notified of the decision seven days after the order is mailed [A2(4)].
- k) for the IMM 5238, complete copy 3, boxes 200 and 227.
- l) for the IMM 1214, complete copy 3, boxes 200, 229, 230, 231 and 277, where appropriate.
- m) distribute the form as follows:
 - i) for **exclusion** orders, distribute as indicated on the form, and send copy 3 to National Headquarters immediately for microfilming.
 - ii) for **conditional departure** orders, give copy 2 to the client and copy 5 to counsel, if available. Retain the other copies on file. When the conditional departure order becomes effective, complete box 229 and send it to National Headquarters for microfilming.

7.7 Your obligations under the Immigration Appeal Division Rules

- a) You will encounter three circumstances where a person against whom you have made a removal order has a right of appeal to the IAD. These are:
 - i) a person who is in possession of a valid immigrant visa at the time the A20(1) report was made, in the case of a person who is seeking landing [A70(2)(b)]
 - ii) a person who is in possession of a valid visitor visa at the time the A20(1) report was made, in the case of a person who is seeking entry [A70(2)(b)], and
 - iii) a person who has previously been found to be a Convention refugee under the Act or its regulations but is not a permanent resident of Canada [A70(2)(a)].
- b) When you make a removal order against a person who has a right to appeal your decision to the IAD, you must advise the person of that right. Provide the person with the address and phone number of the appropriate IAD registry where he or she may file the appeal. *You should obtain a written acknowledgement from the person that he or she has been advised of a right to appeal to the IAD and place it on your file.*
- c) Subject to A49(1.1)(a), removal orders are stayed, at the request of persons who have a right of appeal to the IAD, until the time provided to file that appeal has lapsed (30 days) [A49(1)(a)]. Also subject to A49(1.1)(a), if the person concerned files an appeal with the IAD, the person's removal order is stayed until the disposition of the appeal [A49(1)(b)].
- d) A removal order will not be stayed for a person who is the subject of a report under A20(1) and who has come to Canada from contiguous territory: that is, from the U.S. or St. Pierre and Miquelon [A49(1.1)(a)].

You should advise a person from the U.S. or St. Pierre and Miquelon that:

- i) entering an appeal will not prevent removal, but he or she has a right to apply to the IAD for authorization to return for the hearing [A49(1.1)(a), A56(1) and A75]
- ii) to exercise this right, the person should inform the IAD in writing [IAD Rules, rule 34]
- iii) the IAD may allow the person to return to Canada, with or without terms and conditions, or may refuse to allow the person to return [A75], and
- iv) A75 allows the person's return only for the appeal hearing, if he or she intends to appear in person before the IAD, and provides that expenses will be the responsibility of the individual.

7.8 Appeals to the IAD

An appeal of your decision will begin when an SIO is served with a notice of appeal. Do not accept service of a notice of appeal against a removal order made by an adjudicator.

When you are served with a notice of appeal, retain a copy for your file and immediately file the notice in the appropriate IRB registry [IAD Rules, rule 6(3)].

Advise your regional appeals office that you have been served with a notice of appeal and forward a copy of the notice by facsimile.

You must then serve all parties with a certified true copy of the record, which consists of:

- a certified true copy of the order
- a copy of any report and direction or any statement of arrest concerning the appellant
- any reasons you have given for your decision, and
- a table of contents.

You must serve documents in accordance with rule 35(1) of the *LAD Rules*.

You will file three certified copies of the record at the appropriate IRB registry, retain one copy for your file, and forward a copy of the appeal record to your regional appeals office as quickly as possible.

8. YOUR DETENTION AND RELEASE AUTHORITY

8.1 Detention

For information on reviewing A103.1(1)(a) cases, see section 11. below.

Under A23(3) and subject to A23(4), A23(4.2) and A23(6), you may detain or make an order to detain a person if:

- you adjourn the examination of a person who is the subject of a report made under A20(1)(a), or
- you do not let a person come into Canada under A22, or do not grant admission to or otherwise authorize the person to come into Canada under A23(1) or A23(2) [A23(3)].

Under A103(3.1) you may make an order to detain after an exclusion order, departure order or conditional departure order has been made.

8.1.1. Application of A23(3)

If you do not allow a person who is the subject of an A20(1)(a) report to come into Canada under A22, or do not grant admission or otherwise authorize the person to come into Canada, you may exercise the following options:

a) **detain a person:**

to exercise this option under A23(3)(a), these conditions must apply:

- you have caused an inquiry to be held or wish to adjourn the examination but have not issued an exclusion order or conditional departure order or allowed the person to leave Canada under either A23(4) or A23(4.2)(b), and
- you have reasonable grounds to believe that the person poses a danger to the public or would not appear for an examination or inquiry.

b) **release a person from detention:**

this applies only where a person is already under detention at the time you conduct the SIO review. You have the option under A23(3)(b) of releasing the person from detention subject to terms and conditions, including the posting of a security deposit or a performance bond.

c) **impose terms and conditions:**

you may exercise this option under A23(3)(c) if you wish to maintain control over the person to ensure his or her presence at the examination or inquiry. You may impose appropriate terms and conditions, including the posting of a security deposit or a performance bond, if you have caused an inquiry to be held or wish to adjourn the examination but have not issued an exclusion order or conditional departure order or allowed the person to leave Canada under either A23(4) or A23(4.2)(b).

8.1.2. Application of A103(3.1)

Under A103(3.1) you may exercise one of the following three options if an exclusion order, departure order or conditional departure order has been made against the person:

a) **release a person from detention:**

you may exercise this option if you are satisfied that the person is not a danger to the public and is likely to appear for removal. You may release the person subject to terms and conditions, including the posting of a security deposit or a performance bond [A103(3.1)(a)].

8.1.3. Detention reviews

b) **detain a person:**

you may exercise this option if you believe that the person is a danger to the public or not likely to appear for removal [A103(3.1)(b)].

c) **impose terms and conditions:**

you may exercise this option if you wish to maintain some control over the person to ensure his or her appearance for removal. You may impose appropriate terms and conditions, including the posting of a security deposit or a performance bond [A103(3.1)(c)].

The Act provides a system of checks and balances which requires compulsory review of the validity of reasons for continued detention and authorizes release by an SIO or an adjudicator. You must ensure that reasonable grounds exist which would prove that the person has violated the Act, and that there is a basis for the opinion that the person poses a danger or would not appear.

Generally, the legislation provides that where a person is detained for examination, inquiry or removal and the examination, inquiry or removal does not take place within 48 hours after detention, the person shall be brought before an adjudicator for a review of the reasons for continued detention.

Thereafter, a detention review by an adjudicator shall take place at least once during the seven days immediately following the expiration of the 48-hour period and at least once during each 30-day period following each previous review [A103(6)].

8.1.4. Grounds for detention

The Act provides two main tests that you will use to reach decisions concerning detention and release.

You use *reasonable grounds* as the test in A103(1) for issuing a warrant for arrest and detention, in A103(2) for an arrest and detention without warrant, and in A23(6) for detention and release of persons.

Reasonable grounds are a state of facts and circumstances that would satisfy an ordinary cautious and prudent person and that is more than mere suspicion. There must be some objective basis for your belief.

Likely to pose a danger and *not likely to appear* are the tests you apply when you consider the detention of a person after you have made an administrative removal order [A103(3.1)]. These tests are slightly more onerous than that of *reasonable grounds*. When you are considering detention or release under A103(3.1), you must consider whether detention or continued detention is appropriate on the *balance of probabilities*.

It is not only important that you state the grounds on which your decision to detain a person was based — e.g., “*the person will not appear for his inquiry if he is released from detention*” — you must record the reasons which lead you to believe that the person would not appear or that he posed a danger to the public.

When you are determining whether grounds to detain exist, you should consider:

- a) whether the person poses a danger to the public. Consider medical and police information and the individual's behaviour during immigration proceedings. Remember that not all criminals pose a danger to the public:
 - i) threatening behaviour

- ii) history of violent behaviour
 - iii) instability, mental problems (behaviour during examination)
 - iv) criminal record with offence involving violence
 - v) assault on the examining officer
- b) whether the person is likely to appear for examination, inquiry or removal. Your conclusion will be the sum of a number of considerations, such as whether the person:
- i) has violated a previous bond
 - ii) has moved continuously or provided a false address to avoid detection
 - iii) appears to have lied or escaped or attempted to escape from custody
 - iv) has no place of abode or fixed address
 - v) has returned to Canada following a previous deportation
 - vi) poses a danger to the public, is awaiting criminal trial, is wanted abroad or has criminal record involving acts of deception (credibility in doubt)
 - vii) has previously failed to appear for judicial proceedings or for interview or examination
 - viii) is a health risk
 - ix) is awaiting removal
 - x) is a purely immigration case (that is, not a refugee claimant) and should be removed relatively quickly
 - xi) no contacts in Canada

Alternatively

- i) has responsible relatives or friends in Canada, and
- ii) can provide a meaningful bond or security deposit,
- iii) has substantial non-moveable assets in Canada.

In a situation of doubt, you must give the benefit of the doubt to the person.

You may not detain a person under the Act simply because he or she is indigent. Destitution is not evidence that a person will not appear. If you believe that a person has no means to ensure his or her presence for inquiry or to effect removal, then you should consider this information when you are deciding to detain.

Neither should you detain a person solely because of his or her negative attitude. For example, it would be hard to justify a detention for such reasons (factors) as: *"his negative attitude toward immigration, his state of intoxication, the lack of seriousness he displayed when told how to proceed to regain his admissibility to Canada, resulted in a refusal to grant him 19(3) and to detain him."* A traveller's behaviour during examination should not in itself be a reason for you not to grant discretionary entry, nor should it in itself be a reason for you to detain.

In order to determine whether a detention based solely on the person's behaviour -- e.g., a state of intoxication and the resulting behaviour -- is valid, you should ask yourself the following question: would the adjudicator who is to review the detention after 48 hours would confirm the decision based only on the original grounds?

8.1.5. Rights of detainees

You must inform a person on detention of his or her rights under the *Charter*. Section 10 of the *Charter* requires that persons:

- be informed promptly of the reasons for detention, and
- be advised of their right to retain and instruct counsel without delay.

Section 10 of the *Charter* further provides the right on detention to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

You must advise a person under detention of his or her rights, using a Notice of Rights Conferred by the Vienna Convention and the Right to Be Represented by Counsel at an Immigration Inquiry (form IMM 689).

8.1.6. Detention of minor children

Managers and assistant managers have the authority to decide whether or not to take enforcement action against unaccompanied minors, particularly in relation to detention. For immigration purposes, an unaccompanied minor (i.e. a child less than 18 years old) "*is a child who arrives in Canada or who is already in Canada, who claims or does not claim refugee status, who is alone or if accompanied by another person, it is not a person described in the definition of member of the family class for the purposes of subsection A19(2)(c) or A33, and who does not arrive in Canada to join his/her father, mother or guardian who are already in Canada*". An unaccompanied minor can be admitted to Canada if he or she meets the general immigration requirements.

That said, caution must be exercised in applying the provisions of the Act on detention when an unaccompanied minor is involved. Naturally, every effort must be made to avoid having to detain a minor child. Before any action is taken, it is important to determine how self-sufficient the child is, or whether someone is willing to look after the child. The CICs should make the necessary arrangements with local child welfare agencies or social or child protection services to determine whether they can take charge of the minor, if necessary, until immigration procedures have been completed. It should be borne in mind that concern for the protection of a child does not constitute a ground under A103 for detaining a child. Detention of a minor must be a last resort, but it is not excluded in cases, for example, where the minor has been convicted for violent crimes or he or she constitutes a danger to the public. In such extreme cases, if the minor is detained, he or she should be held apart from the rest of the incarcerated population.

8.2 Release

8.2.1. Authority to release

Within 48 hours of the initial detention, you can release from detention any person who has been detained for examination, inquiry, removal or determination [A103(5)]. You cannot exercise this authority if the initial detention has continued for more than 48 hours.

When you review detention under A103(5), complete a Release Hearing form (IMM 1439) to document what took place at the detention review.

You may release on terms and conditions that you consider appropriate, including the payment of a security deposit or the posting of a performance bond. You should consider what conditions of release may be acceptable.

8.2.2. Directing persons back to the U.S.

If you have concerns about the unavailability of the detainee, consider releasing or seeking the release of the detainee to an individual guarantor who comes forward on the person's behalf.

You must be satisfied that a guarantor is able to exercise such control over the movements of the person released from detention that the person will report for the continuation of immigration proceedings as required. You must also assess the reliability of the proposed guarantor. For example, if a proposed guarantor had defaulted on a previous performance bond, you might feel less inclined to release the person concerned without requiring a cash deposit. For more information on cash deposits and performance bonds, see section 9. below.

If you do not release the person and an examination, inquiry or removal does not take place within 48 hours, you must cause a detainee to be brought before an adjudicator as soon as practicable so that detention may be reviewed [A103(6)].

Should detention be continued, the person must be brought before an adjudicator at least once in the seven days immediately following the expiration of the 48-hour period and thereafter at least once each 30-day period following each previous review.

When you must cause a detention review by an adjudicator, complete a Request for an Inquiry/Detention Review Pursuant to the Adjudication Rules (form IMM 5245) each and every time a detention review is necessary [*Adjudication Division Rules*, rule 28].

If you cause an inquiry to be held about a person who has arrived in Canada from the U.S. but an adjudicator is not readily available, you may direct the person back to the U.S. to await inquiry [A23(5)].

As an SIO, you may direct back *only* if an inquiry is to be held. You may not direct back when the A20(1) report has been written for an allegation requiring you to make an administrative removal order.

You may direct back in a case where an adjudicator is required to make a determination on the allegation contained in the A20(1) report before an eligibility decision can be made on a refugee claim [A45(2)]. Before you direct the person back for inquiry, carefully consider whether you should detain the person for inquiry [A23(6)].

To direct a person back to the U.S., complete a Direction to Return to the United States under Subsection 23(5) of the *Immigration Act* (form IMM 1238; see APPENDIX D) on FOSS, and distribute copies as indicated on the form. If FOSS is unavailable, complete the form manually and enter the document electronically by *status entry* when FOSS becomes available.

Counsel a person whom you direct back to the U.S. on:

- the nature of allegations contained in the A20(1) report written about him or her, and ensure that the person is provided with a copy of the A20(1) report
- the person's right to be represented by counsel at the inquiry, and
- the date and place of the inquiry (review the information on the IMM 1238 with the person).

A person who approaches a POE at the time specified on the IMM 1238 for the purpose of appearing for inquiry will be referred directly to the adjudicator.

If an adjudicator is not readily available, you may again direct to return to the U.S. a person who:

- has been directed to return to the U.S. under A23(5), and
- remains inadmissible for the same reasons.

In this circumstance it is not necessary to write a new A20(1) report.

Bear in mind, however, that the person may require time to allow for travel to the location of the inquiry, and the circumstances may warrant allowing the person forward at an appropriate time in advance of the inquiry date. This is particularly so if the person approaches a POE other than the POE at which he or she was originally reported.

9. TYPES OF SECURITY

Acting alone or on the recommendation of an IO, you have the authority to require a cash deposit or a performance bond when you have serious doubts whether the person will comply with the Act [A18(1)]. You may also use a cash deposit or a performance bond to release a person from detention pending continuation of examination, inquiry or removal [A23(3)(b), A103(3.1)(a)], or you may impose terms and conditions as you deem appropriate in the circumstances of the case where detention or release is not a factor [A23(3)(c), A103(3.1)(c)].

9.1 A18 security deposits

Either in your own discretion or on the recommendation of an IO, you may require that a visitor or group of visitors seeking to come into Canada be required to provide security to guarantee compliance with any terms and conditions that may be imposed under the Act [A18].

You should consider security when a person is otherwise admissible to Canada but you have serious doubts whether the person will comply with the Act: for example, by taking unauthorized employment, by becoming a student while in Canada, or by failing to leave Canada when required to do so. If the person has friends or relatives in Canada (who are Canadian citizens or permanent residents) prepared to post a cash deposit or performance bond, you should always consider security.

A performance bond in lieu of cash is acceptable when the third party posting the bond (the co-signor or bondsperson) can satisfy you that he or she has the means to pay the amount of the bond in the event of default. A visa officer at a visa office abroad cannot take security under A18 as a condition of issuing a Canadian visa. If a visa officer has issued a visa and is aware of circumstances that in themselves were not sufficient to warrant refusal of a visa, but that may be of interest to officers at the POE, the visa officer may alert the POE by telex. The fact that a visa officer has issued a visa does not preclude you from requiring security as a term or condition of admission if you believe that security is required.

You cannot use security deposits to cure an obvious inadmissibility to Canada.

A person who cannot or will not comply with a requirement for security under A18 may be reportable under A19(1)(h) or possibly A19(2)(d) for A18(1). If the person is reportable under A19(2)(d) for A18(1), he or she may make the required cash deposit or arrange the posting of a performance bond before inquiry. In such a case, it may be appropriate to arrange for the withdrawal of the request for inquiry, and you may wish to grant entry.

When you request a deposit, you should grant the person a period of time reasonably consistent with the length of time originally requested, to avoid the need for the person to request an extension inland. When you require that the person promise security under A18(1), you must document the entry on an IMM 1097.

Security could take a form other than a deposit of cash [A18(1)]. Immigration policy is to accept only an amount of cash as security, because the value of non-cash security may be difficult to establish and to convert into money if the person defaults.

**9.2 Security under A23(3)(b),
A23(3)(c), A103(3)(a),
A103(3)(c), A103(3.1)(c),
A103(5) and A103(7)**

If an SIO adjourns the examination of a person subject to an A20(1) report, or does not let the person come into Canada under A22 and does not grant admission or otherwise authorize the person to come into Canada, it may be appropriate for the SIO to require security in the form of a cash deposit, a performance bond, or a combination of the two as a term or condition of release from detention [A23(3)(b)].

An SIO can also require that a person provide a cash deposit or performance bond in appropriate circumstances where detention or release is not a factor [A23(3)(c)].

The provisions of the Act dealing with release from detention and release on terms and conditions are intended to reflect the overall requirement of the *Canadian Charter of Rights and Freedoms* that persons not be deprived of personal liberty except in accordance with the principles of fundamental justice. The Act provides that a person may not be arrested or detained, or if arrested, must be released, unless there are reasonable grounds to believe that the person presents a danger to the public or would not otherwise appear for examination, inquiry, determination by an SIO or removal.

If an inquiry is to be held or continued, or a removal order or conditional removal order has been made against a person, an adjudicator can require that the person make a cash deposit or post a performance bond as a term or condition of release from detention [A103(3)(a)], or in any event, impose such terms and conditions as the adjudicator deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond. For example, an adjudicator may impose terms and conditions at the conclusion of or at the point of adjournment of an inquiry where the person reported voluntarily for inquiry and security was not previously required [A103(3)(c)].

If an exclusion order, departure order or conditional departure order has been made by an SIO against a person, an SIO can require a cash deposit or performance bond as a condition of release from detention [A103(3.1)]. In any event, an SIO can impose such terms and conditions as the SIO deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond [A103(3.1)(c)]. For instance, an SIO at an inland office may require security after the person has reported voluntarily and has been given an administrative removal order.

An SIO may require a cash deposit or performance bond as a condition of release from detention at a release hearing held within 48 hours of initial detention [A103(5)].

An adjudicator at a detention review held after the initial 48-hour period of detention may require a cash deposit or performance bond as a condition of release, if the person in detention is not likely to pose a danger to the public and is likely to appear for an examination, inquiry or for removal [A103(7)].

9.3 Cash deposits

A cash deposit is a sum of money deposited to ensure compliance with terms and conditions imposed under the Act, and may be provided either by the person who is to be the subject of terms and conditions, or by a third party.

A deposit is refundable when the terms and conditions imposed are either revoked or met. If the person breaches the terms and conditions, the cash deposit may be forfeited to the Receiver General for Canada.

Each office should have a system whereby cash deposits are reviewed for appropriate action at the conclusion of a case. A bring-forward system for case files should be in place to ensure that officers review outstanding cash deposits for refund or forfeiture action before the file is sent to archives.

9.3.1. Taking cash deposits

To take a cash deposit, you should:

- a) complete a Cash Deposit form (IMM 514; see APPENDIX E) in full. Enter the complete and exact name of the depositor so that a refund can be issued properly.
- b) prepare a Revenue Journal form (FIN 3160; see APPENDIX F).
- c) forward copy 1 of the FIN 3160 and copy 2 of the IMM 514 to the Chief, Revenue Accounting at National Headquarters. If the cash deposit is being taken from a group of 15 or more performing artists and staff who are exempt from the requirements of s. 18 of the *Immigration Regulations* by virtue of s. 19(1)(d) of the *Immigration Regulations*, send a copy of a completed Local Visitor Control form (IMM 60; see APPENDIX G) with copy 2 of the IMM 514.
- d) provide the individual or group depositor with a receipt or other documentary record specifying the circumstances in which the deposit may be forfeited [*Immigration Regulations*, s. 25(2)].
- e) if a condition of the cash deposit is that the person leave Canada on or before a certain date, advise the person to report to an IO at the port of departure so that the IO can confirm departure. Failure to confirm departure will result in forfeiture or serious delay in refunding the deposit.

9.3.2. Altering and amending cash deposits

A cash deposit must not be altered or amended without the consent of all parties involved, including you, if you required the bond, or an adjudicator, if the bond was imposed by an adjudicator.

A person may be released on a cash deposit and then circumstances warrant taking another deposit or completing a new Cash Deposit form (IMM 709).

In the case of a cash deposit required under A18(1), an SIO inland may, at the request of the person concerned and the bondsperson, amend the terms and conditions of the deposit: for instance, by extending the departure date. A bondsperson must post a new deposit at that time, and if the person who is the subject of the security fails to depart Canada by the extended date, the bondsperson would have to forfeit the amount of the deposit to the Receiver General for Canada. The POE must be advised in the event of the extension, the replacement or the refund of any deposit required under A18(1).

If circumstances warrant increasing the amount of the cash deposit, an additional cash deposit may be required.

If circumstances require the changing of the wording of the conditions of the cash deposit but not the amount, on a new IMM 514 complete the line *Replaces previous cash security deposit no....for the same amount* instead of acknowledging receipt of the cash deposit.

If a reduction in the amount of the cash deposit is in order, take a smaller cash deposit from the person by requesting a partial refund of the original deposit as follows:

- a) on an IMM 514 form, complete the line *Replaces previous cash security deposit no....in the amount of...* instead of acknowledging receipt of the cash deposit
- b) complete box 3 of a Requisition for Refund/Forfeiture of Cash Security Deposit form (IMM 709; see APPENDIX H)
- c) complete the *Remarks* section of the IMM 709 with any necessary clarification, and
- d) forward the completed IMM 514 and IMM 709 forms to the Chief, Revenue Accounting at National Headquarters. Send original copies, not photocopies.

Unilateral alteration of a cash deposit may result in a breach of the contract entered into by the parties concerned.

9.4 Performance bonds

A performance bond is a written guarantee by a third party that the person who is the subject of the bond will comply with the terms and conditions imposed on him or her. For immigration purposes, a performance bond is a promise to pay a sum of money if the person defaults.

Failure of the person who is the subject of the bond to fulfil the terms and conditions constitutes default, and may make the third party who posted the bond liable to pay the amount of the bond. A performance bond is revoked when the terms and conditions for which the bond was posted are met.

Performance bonds are also known as conditional bonds, because the third party posting the bond is not required to provide the cash amount of the bond unless the person who is the subject of the bond does not respect the terms and conditions of the bond.

9.4.1. Legal attributes of performance bonds

A performance bond is a legal contract between immigration authorities and a third party concerning the conduct of another person. A performance bond is in fact a guarantee. The person posting a performance bond provides a legally enforceable guarantee that the person who is the subject of the bond will abide by certain terms and conditions imposed by an SIO or an adjudicator. The bond requires the same legal attributes as any other contract.

A performance bond cannot be enforced unless its terms are both certain and complete. Vague terms or terms that require further agreement at some time in the future may render the performance bond unenforceable.

A consensus between the parties to the performance bond must exist. There must be both an offer by a person to guarantee certain terms and conditions by the posting of a bond for a certain amount, and acceptance of that offer by immigration authorities.

The parties to a performance bond must have legal capacity. A person posting a performance bond must be of legal age to enter into a contract in the jurisdiction where the bond is given, and must not suffer from a mental disability.

You must closely examine a potential co-signer of a performance bond to determine:

- a) if the proposed bondsperson is a Canadian citizen or a permanent resident; it is departmental policy not to entertain bonds from non-residents because it may be impossible to estreat a bond from a person with no permanent attachment to Canada;
- b) if the proposed bondsperson is a co-signer for other outstanding performance bonds;
- c) if the proposed bondsperson is financially capable of meeting the obligation of the bond should the person concerned not meet the terms and conditions imposed (that is, whether the bondsperson has liquid assets available), and
- d) if the proposed bondsperson will be able to exercise control and influence over the actions of the person concerned. For instance, if the proposed bondsperson had harboured the person concerned when that person was illegally in Canada or had knowledge that the person was illegally in Canada, he or she may not be a suitable bondsperson.

9.4.2 Obligations of co-signers

The essential obligation of the co-signer of a performance bond posted under the Act is to ensure compliance with any terms and conditions imposed. The most important condition that may be imposed is that the person concerned must appear as required from time to time.

The Act provides for forfeiture of the entire amount of a cash deposit or performance bond if the person concerned breaches one or more of the terms and conditions attached to the cash deposit or bond. It is important that a person agreeing to co-sign a performance bond understands the significance of the undertaking given, the responsibilities involved and the consequences of breach of the terms and conditions by the subject of the deposit or bond.

9.4.3 Taking of performance bonds

When taking a performance bond, the *Solemn Declaration of Solvency By Bondsperson* must be completed (IMM 1416) in all cases, without exception. Form IMM 1416 has been revised to include such information to facilitate collection, should it become necessary to realize the bond. The older versions of IMM 1416 are no longer to be utilized.

To ensure the successful collection of defaulted performance bonds, it is imperative that form IMM 1416 is completed fully and accurately and signed as required. Officers are to take reasonable steps to verify the information provided by the potential bondsperson on form IMM 1416 (i.e. copies of income tax declarations, pay stubs, etc).

In assessing a potential bondsperson, as a minimum, the following factors must be addressed:

- a) is the amount of collateral available and declared by the bondsperson sufficient to satisfy the amount of the bond in the event of default?
- b) has the bondsperson previously been in default of Immigration bonds?

Following the approval of the bondsperson, officers must then complete the performance bond (form IMM 1230 or IMM 1259) and any other documentation (see EC 8, section 5.2), as required.

Originals of form IMM 1416 and IMM 1230 or IMM 1259 are to be retained on file. A copy of form IMM 1416 is to be provided to the bondsperson. A copy of IMM 1230 or IMM 1259 is to be provided to the bondsperson and the person bonded.

Form IMM 1416 contains a preprinted number on the top right corner. This number is the bond reference number and **must** be written on the actual performance bond (IMM 1230 or IMM 1259) and any other documentation relating to the bond. Clients should be advised to quote the bond reference number in all inquiries and correspondence relating to the bond.

Until such time that bond information is captured electronically, CICs taking performance bonds are advised to maintain a log containing the following details in order to facilitate inquiries and tracing: (a) bond reference number; (b) CIC file number; (c) name of bondsperson; (d) bondsperson's FOSS client number; (e) name of person bonded; (f) bonded person's FOSS client number; (g) amount of bond; (h) bond date and (i) default status.

9.4.4 The effect of breaching terms and conditions

If the person who is the subject of a performance bond breaches any or all of the terms and conditions guaranteed by the bond, the Canadian government can enforce the bond by requiring that the amount of the bond be paid. For example, if by co-signing a bond a bondsperson guarantees that a visitor will leave Canada by a certain date, the bondsperson will be relieved of the obligation of the bond when the person departs Canada as agreed. If the person does not depart Canada as agreed, the bondsperson may have to pay the amount of the bond to the Receiver General for Canada.

9.4.5 Changing the conditions of bonds

The terms and conditions of a performance bond cannot be altered without the consent of all parties to the agreement. *If terms and conditions are to be changed, they must be changed by an SIO, if the bond was required by an SIO, or by an adjudicator, if the bond was imposed by an adjudicator.* A unilateral attempt to alter the terms and conditions upon which a bond was posted by making an addition or deletion will render the bond void and of no effect.

When a person is released from detention under bond solely to appear for the *opening* of an inquiry, the bond becomes void when the person appears and the inquiry commences. Thus the co-signer would have to appear at the inquiry and be prepared to co-sign a new bond should release be offered by the adjudicator. To avoid the necessity of having the co-signer of the bond appear at the inquiry, the terms and conditions of the bond should require that the person concerned appear when requested during the entire inquiry and removal process. The need for new or subsequent bonds can be avoided by using the appropriate wording when the bond is first required. To continue the bond throughout the course of the inquiry and removal process, use wording such as:

9.5 Acknowledgement of terms and conditions

9.6 Amounts of cash deposits and performance bonds

9.7 Terms and conditions

to appear at the time and place required for the purpose of scheduling an inquiry under the Immigration Act, for inquiry and at each subsequent sitting of such inquiry, for removal, or whenever required by an immigration officer.

Each party to the bond knows the terms of the bond at the time of its execution: namely, that the person concerned is required to appear whenever directed by an adjudicator or an IO. This clause is enforceable, even though the co-signer does not know the times and places of appearance at the time the bond is executed.

Use an Acknowledgement of Terms and Conditions form (IMM 1262) in a situation where a cash deposit or performance bond is not required.

The face value of a deposit or bond should not be prohibitive or excessive. Section 18 of the Act suggests that a reasonable amount of money be required. The amount required should:

- be sufficient to impress on the person concerned (and the bondsperson) the importance of complying with the terms and conditions attached to the security;
- be sufficient to provide a meaningful penalty for breach;
- reflect your reasonable assessment of the degree of risk that the individual will not comply with the terms and conditions imposed, and
- take into account the future costs that may be incurred to locate the person, arrest him or her, hold an inquiry and remove the person from Canada.

Given that the cost of an average inquiry and removal exceeds \$4,000, you should generally not consider a cash deposit or bond for less than that amount.

You may require both a cash deposit and a performance bond. A cash deposit is preferable to a performance bond.

You can avoid the need for new or subsequent bonds by using the appropriate wording when the bond is first required. To continue the bond throughout the course of the inquiry and removal process, use wording such as:

Name of person concerned must appear at the time and place required for the purpose of scheduling an inquiry under the Immigration Act, for inquiry and at each subsequent sitting of such inquiry, for removal, or whenever required by an immigration officer.

Bonds required as a guarantee under A18(1) should include a term and condition such as:

Name of person concerned must comply with any other terms and conditions as have been issued in writing to *name of person concerned* on any visitor record or authorization.

9.8 Counselling factors for bonds

You should counsel a person granted entry and his or her bondsperson, if any, about:

- the purpose of the bond;
- the meaning of any terms and conditions imposed;
- departure verification, where required;
- the refund provisions, where applicable, and
- the consequences of non-compliance.

9.9 The effect of the person's departure from and return to Canada

The courts have found that an immigration inquiry is not terminated by the departure and return of the subject of the inquiry from Canada (*Ravinder Kaur v. Minister of Employment and Immigration*, FCA, Doc. No. A-295-84, September 25, 1984 and *Harnek Singh Grewal v. Minister of Employment and Immigration*, FCA, Doc. No. A-42-80, May 7, 1980).

It could be argued that in this circumstance, a cash deposit or performance bond would continue to be valid, if the person who is the subject of the deposit or bond has not violated any of the previously imposed terms and conditions, and if the co-signer, if any, did not take the position that the guarantee of performance given when the bond was executed had been voided by the departure of the person from Canada. On the other hand, depending on the terms and conditions imposed when the bond was executed, the person's departure from Canada may violate a term or condition and the bondsperson might have to pay the amount of the bond to the Receiver General for Canada.

If the subject of an inquiry leaves Canada and then seeks to return to Canada for the continuation of an immigration inquiry, the IO at the POE should examine the person in accordance with the request made *at the time entry is requested*. A new report and, if necessary, a new bond, may be required.

10. WITHDRAWALS, REFUNDS AND FORFEITURES

The signatory of a security deposit has entered into a serious obligation to ensure that the person concerned complies with any terms or conditions imposed. The Act provides for the enforcement of the full amount of the forfeiture when the person breaches the conditions of a security deposit, despite the existence of mitigating circumstances. The person signing a security deposit must understand the importance of his or her undertaking, and the responsibilities and the consequences should the person concerned not meet any of the terms and conditions imposed.

Sections 18 and 104 of the Act both state that where a person fails to comply with any of the terms and conditions that were imposed, a security deposit *may* be declared forfeited or a performance bond *may* be enforced. This discretionary authority, which has been delegated in Instruments I-12 and I-25 (see chapter II 3), was included in the Act to allow for those situations where, in the judgement of the authorized officer:

- a) the conditions of the security deposit were violated through no fault of the individual (for example, the person failed to report because of illness), or
- b) extenuating humanitarian considerations exist.

A performance bond should not be estreated or a cash deposit forfeited when:

- a) a subsequent decision is made to deal with the person favourably (for example, the person was to leave by a specified date but has been processed and landed);
- b) the person is required to report or leave on a certain date but is incarcerated and unable to comply;
- c) the person leaves Canada within a few days of the date stipulated in his or her security deposit;
- d) the person's departure has not been confirmed but indications are that he or she has left Canada; no action should be taken to forfeit the deposit until the person has been allowed a reasonable period of time to prove his or her departure, or
- e) the Immigration Appeals Division of the Immigration and Refugee Board allows an appeal or quashes a removal order.

10.1 Withdrawals

A bondsperson, a co-signer of a performance bond or a person who undertook to give a cash deposit may request to be released from the obligation of the cash deposit or performance bond. Although nothing in law prevents the release of a person who has signed a bond, a bondsperson or guarantor cannot be relieved of his or her obligation by merely stating the desire to be relieved, or by merely requesting it. He or she must apply to an SIO, if an SIO imposed the bond, or to an adjudicator, if an adjudicator imposed the bond.

If the bond is to be rescinded or cancelled, an appropriate person must enter into a substitute bond or the subject of the bond must be delivered into custody. The onus to produce the subject of a bond is always on the bondsperson. Immigration officials will not locate and arrest the subject of a bond so that a bondsperson may be relieved of the obligation of the bond.

10.2 Refunds

When the person who is the subject of a bond or deposit has complied with the terms and conditions for which a cash deposit or performance bond was required, the immigration officials must cancel the bond or return any monies held in the Consolidated Revenue Fund to the depositor.

Although the Act does not provide specific authority for refunding cash deposits, s. 14 of the *Financial Administration Act* and the *Regulations Re: Payment of Money Received* provide the necessary authority to return funds held on deposit.

When it is determined that a person has complied with the conditions established in the cash deposit (IMM 514), an authorized officer must complete a Requisition for Refund/Forfeiture form (IMM 709) and forward it for refund action to the Chief, Revenue Accounting at National Headquarters.

10.3 Forfeitures

If the person concerned breaches a term or condition, the Act provides that a cash deposit may be declared forfeit and a performance bond may be enforced.

Instrument I-12 provides the delegated discretionary authority for:

- the forfeiture of cash deposits
- the realization of performance bonds required by an adjudicator or an SIO, and
- a person's release from detention under any provision of the Act.

Instrument I-25 contains a similar delegation for forfeiture of cash deposits and realization of performance bonds taken under A18(2).

Delegated officers deciding whether to proceed with forfeiture of a deposit or enforcement of a bond should consider each case on its merits.

In assessing whether to declare a bond in default, the following factors should be addressed:

- a) the nature of the breach;
- b) any representations or submissions made;
- c) the overall circumstances of the case.

The fact that a person has made a claim to be a Convention refugee in Canada has no bearing on a decision to declare a cash bond forfeit or to enforce a performance bond.

The existence of a cash deposit or performance bond is not a determining factor in deciding whether or not a person should be allowed to withdraw voluntarily at a POE or to leave Canada. If an officer allows the person to withdraw voluntarily or to leave Canada, the normal course would be to refund the cash deposit or to refrain from taking action on the performance bond.

If a person who is the subject of a cash deposit or performance bond has breached a term or condition, the SIO processing the deposit or bond should review the circumstances of the breach, and recommend to the manager of the CIC that the cash deposit be forfeited or action taken to realize the performance bond.

Persons must be given an opportunity to make submissions on why the cash deposit should not be forfeited or the performance bond should not be estreated.

On receiving an SIO's recommendation for forfeiture or realization, the CIC manager must:

- review the circumstances of the case;
- for a cash deposit, complete a Requisition for Refund/Forfeiture form (IMM 709) and forward it to Revenue Accounting at National Headquarters;
- for a performance bond, initiate the necessary regional action to realize the bond;
- inform the SIO of the decision, and
- notify the person concerned, in writing, of the reason that action is being taken to forfeit the cash deposit or realize the performance bond.

New information may become available to cause an SIO to recommend that the deposit be refunded, rather than forfeited, after the forfeiture has been processed by a CIC manager. In this circumstance the CIC manager must repeat the steps outlined above, detailing the reason for the reversal in the *Remarks* section of IMM 709.

10.4 Steps for the realization of performance bonds

Once the decision to enforce the performance bond is made, the *Requisition For Realization of Performance Bond* (IMM 5345) must be completed by the delegated immigration officer.

The subject of the bond and the bondsperson must be informed, in writing, of the decision to enforce the bond. The letter must include the following details:

- a) names of bondsperson and subject of bond;
- b) bond date and bond amount;
- c) bond reference number;
- d) instructions for the client to remit payment to the following address:
 Citizenship and Immigration
 Revenue Accounting
 Journal Tower North, 4th Floor
 300 Slater Street
 Ottawa, Ontario
 K1A 1L1
- e) instructions for the client to make payment by certified cheque or money order made payable to the "Receiver General for Canada" with the bond reference number quoted.

10.5 Requests for information

Do not refer requests for information about forfeiture or refunds directly to Revenue Accounting at National Headquarters. A local office may contact Revenue Accounting on behalf of a client (tel.: 613-957-8462).

10.6 Powers of attorney and assignments

A person entitled to request a refund of a cash deposit may sometimes give a power of attorney to another person to act on the requester's behalf, and a bondsperson may execute an assignment of bond by transferring any interest held in the bond to another person. The evidence of a power of

10.7 Security given by a third party

attorney or an assignment of a bond is a written document under seal. The original copy of the document, not a photocopy, must be forwarded to Revenue Accounting before a cash deposit can be reimbursed to an attorney or an assignee.

The rules of procedural fairness require that an officer should not recommend forfeiture of a cash deposit or realize a performance bond executed by a third party unless the third party is given an opportunity to make a written representation concerning the decision to be made.

When a breach of terms and conditions occurs that might result in forfeiture of a cash deposit or action to realize on a performance bond, the depositor or bondsperson must be informed in writing of the breach and the possibility of forfeiture or enforcement, and must be granted an opportunity for written representations.

The CIC manager will determine whether it is appropriate to settle for an amount less than that originally stipulated in a performance bond on a case-by-case basis, according to regional guidelines.

When the bondsperson refuses or is unable to honour a commitment in a performance bond, or any reduced commitment that might be negotiated, refer the matter to the Justice Department regional office for civil prosecution.

10.8 Procedures for the realization of performance bonds

Finance will realize defaulted performance bonds through its collection strategy. Revenue Accounting at national headquarters will commence collection procedures on receipt of the following documents:

- a) *Requisition For Realization of Performance Bond* (IMM 5345);
- b) *Solemn Declaration of Solvency By Bondsperson* (IMM 1416);
- c) Copy of the performance bond (IMM 1230 or IMM 1259);
- d) Letter advising persons concerned and bondsperson(s) that the performance bond is declared to be in default and that payment is to be remitted to NHQ Finance.

The above documents are to be forwarded to the Finance Section of the local CIC. Each local CIC Finance Section, in turn, will forward to RHQ Finance for input to General Accounts Receivable System (G.A.R.S.).

11. REVIEWING A103.1(1)(a) CASES

Persons who are unable to satisfy an IO as to their identity, or persons who in the opinion of the Deputy Minister or the Deputy Minister's designate may be members of the inadmissible classes described in A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l), may be detained by an SIO for a period not exceeding seven days [A103.1(1)]. If continued detention under A103.1 is desirable, a Minister's certificate must be sought [Instrument I-36].

A person who cannot corroborate his or her identity through the usual documentary evidence required by s. 14 of the *Immigration Regulations* will normally be detained if it can reasonably be determined that the person had a document before embarking for Canada, unless the person is able to give a credible account of his or her identity, including:

- name, age, nationality, date and place of birth, city and country of normal residence and itinerary for the trip to Canada, and
- some corroboration of this account in the form of:
 - testimony from relatives or friends who are residents of Canada, or
 - identity documents or other reliable official documents other than those described in s. 14 of the *Immigration Regulations*.

Despite the fact that the person has not satisfactorily established his or her identity, release may be warranted if no security threat is seen to exist, and there is either some acceptable evidence concerning the person's identity or mitigating circumstances outweigh the doubts concerning identity, such as:

- the age and health of the detainee;
- the presence of relatives in Canada;
- accompanying dependants;
- the overall credibility of the person as established through questioning, and
- whether the necessary documents were accidentally forgotten, lost or stolen.

11.1 Identity established during the period of continued detention

If a person's identity and background are satisfactorily established during the period of detention under A103.1, you do not have jurisdiction to act. The person concerned must be brought forthwith before an adjudicator. At that time the usual considerations under A103(3) apply [A103.1(12)].

If a person is detained under A103.1(1)(a) and there are no issues relating to A103.1(1) (b), the CPO may make a verbal declaration to the adjudicator that the person's identity has been established. For cases involving detention on the grounds that the person is inadmissible under paragraph 19(1) (e), (f), (g), (j), (k) or (l), the CPO must present the adjudicator with an Opinion of the Minister (form IMM 5012; see APPENDIX L) to the effect that identity has been established.



11.2 Enhanced investigations after A103.1(1)(a) reviews

A CPO will be called on at a detention review or an inquiry to satisfy an adjudicator that reasonable efforts are being made to establish the identity of the person concerned. For this reason investigation into a person's identity must be of the highest priority. Officers should provide the CPO with a detailed account of all efforts made to that point, and an estimate of the time normally associated with securing the particular type of information.

Officers must use every possible means to follow leads. As with any investigative process, this may require a selective approach based on an assessment of the quality of the lead and the likelihood of success. The detainee and counsel should be reminded that they can help expedite release by providing complete personal information and by independently seeking documentary evidence in the country of origin. The consent of the individual is not needed to release personal information in the course of the status checks, because s. 8(2)(a) of the *Privacy Act* provides for the release of personal information when the release is for the purpose for which the information was obtained (in this case, for the purpose of establishing the person's identity).

With the exception of the U.S., the appropriate External Affairs and International Trade Canada post must handle all approaches to persons abroad.

11.3 Certificates to extend detention under A103.1(2)(a)(i)

Because there may be unavoidable delays in obtaining information to confirm a person's identity or investigate his or her background; an additional period of detention is available for further investigation. In all cases a signed statement is required to certify that the additional period is necessary to investigate the person's identity, as follows:

- a Certificate Pursuant to Subparagraph 103.1(2)(a)(i) and Paragraph 103.1(2)(b) of the *Immigration Act* (form IMM 1446; see APPENDIX M) for the purposes of A103.1(2)(a)(i), or
- a Certificate Pursuant to Subparagraph 103.1(2)(a)(ii) and Paragraph 103.1(2)(b) of the *Immigration Act* (form IMM 5004; see APPENDIX N) for the purposes of A103.1(2)(a)(ii).

Managers must assess the need for an additional period of detention, based on the information provided by IOs concerning continuing efforts to identify the person or investigate the matter referred to in A103(2)(a)(ii), and any indications of the anticipated time necessary for receiving identity information. Detention will continue as long as the adjudicator is satisfied that every reasonable effort is being made to identify the individual or investigate his or her background.

Because detention under A103.1(2) may be lengthy, the person should be referred for a medical examination if an adjudicator maintains detention [A11(1.1) and A11(2)].

Given the short time in which to apply for an IMM 1446 or IMM 5004 certificate under A103.1(2), send requests by facsimile to the Director General or Director of Immigration at the Regional Headquarters concerned (see chapter IL 3, Instrument I-36) clearly marked *Urgent*:

same-day delivery. Immediately follow up the facsimile by telephone to confirm that you have sent a request, to alert the Regional Headquarters to the situation.

Offices preparing reports in these cases should provide details concerning information currently available to support the alleged inadmissibility, as well as an indication of any delays expected in obtaining information to confirm that the grounds for continued detention exist.

The detention certificate (IMM 1446 or IMM 5004) must be issued before the expiry of the initial seven-day period if the Minister thereafter wishes to seek a person's detention on the grounds of a need to investigate identity or the matter referred to in A103.1(2)(a)(ii). When the Minister certifies in writing that a further investigation, the person must be brought before an adjudicator forthwith and at least once every seven days thereafter.

If the IMM 1446 or IMM 5004 certificate is not issued before the expiry of the seven-day period, the adjudicator will conduct a review under A103.1(4) and will decide whether to release or detain based on the usual considerations under A103(3).

If a person's identity and background are satisfactorily established, you do not have jurisdiction to act. The person concerned must be brought forthwith before an adjudicator. Please refer to section 10.1 above for further details.

11.4 Certificates to extend detention under A103.1(3)

Once a person has been detained for an investigation of identity and the person's identity has been established, the Minister may then have reason to suspect that the person may pose a security risk. Subsection 103.1(3) of the Act allows the Minister to require that detention be continued, based on an Amendment of Certificate Pursuant to Subsection 103.1(3) of the *Immigration Act* (form IMM 5003; see APPENDIX O). If the Minister makes the amendment, the person must be brought forthwith before an adjudicator rather than wait for the next scheduled seven-day review.

The Minister's authority under A103.1(3) has not been delegated.

Given the short time frame in which to apply for an IMM 5003 certificate, send your request by facsimile (fax: 819-953-8119) to the Director General, Enforcement Branch at National Headquarters clearly marked *Urgent: same-day delivery*, and a copy to the Regional Director General or Director of Immigration concerned. Immediately follow up your facsimile by telephone (tel: 819-994-4871) to confirm that you have sent a request, to alert National Headquarters to the situation.

Offices preparing a request to National Headquarters must include full details to support the suspicion of a security risk.

12. SEARCHES

An IO has the authority to search a person seeking to come into Canada who the IO believes, on reasonable grounds, has not revealed his or her identity, or who has hidden on or about his or her person documents that are relevant to the person's admissibility, and may search any vehicle that conveyed the person to Canada and the person's luggage and personal effects [A110]. This includes a person seeking to come into Canada who the IO has reasonable grounds to believe has committed or is in possession of documents that may be used in the commission of the following offences:

- offences under A94.1 relating to the organization of illegal entry into Canada (single persons or groups of less than 10)
 - offences under A94.2 relating to the organization of illegal entry into Canada (groups of more than 10), and
 - disembarking persons at sea [A94.4].

You must authorize any search of a person in advance of a personal search taking place [A110.1(1)].

Two kinds of personal searches require your written approval:

- **frisk:** often called a “patdown”, the frisk is a personal search that involves physical contact with the person. It is used to detect documents concealed in a person's clothing.
- **disrobement:** a disrobement search involves the full or partial disrobement of the person to detect or obtain documents that the person has concealed on his or her person. Disrobement is detention and the person must be advised of his or her rights under the *Charter*.

No person can be personally searched by a person who is not of the same sex [A110.1(3)]. For further information on personal searches, see section 3.5 of chapter PE 12, *Search, Seizure, Fingerprinting and Photographing*.

12.1 Requests for personal searches

Before a personal search takes place, the examining IO will complete a Personal Search form (IMM 5242) for your signature, outlining the reasons why the IO believes that a personal search is necessary. You must review the IMM 5242 to determine if you are satisfied that reasonable grounds exist to authorize the search. Completing of the form properly is important because it may be required as evidence if a complaint is received concerning a search.

For further information on completing the Personal Search form (IMM 5242), see section 3.6 of chapter PE 12.

12.2 Reasonable grounds

Reasonable grounds are grounds that, due to probable elements, facts, circumstances or pieces of information that are or may be available, would lead an informed and experienced officer to believe that a violation of the Act or its regulations may have occurred or may occur.

You should consider several factors in establishing reasonable grounds:

- what are the reasons why the examining officer believes the person should be searched?

- have the person's belongings (such as luggage) been searched? What were the results?
- are there reasons to believe that the person had identity papers when he or she started the trip?
- are the stated reasons mere suspicion?

The department expects that authorizing a full body search will be a rare occurrence.

For further information on reasonable grounds, see section 2.2 of chapter PE 12.

12.3 Searching Canadian citizens

Canadian citizens may be searched only if you are satisfied that the person may have committed an offence under A94.1, A94.2 or A94.4. You should be satisfied that there is reasonable and probable cause to believe that the individual has committed the prescribed offence.

Although the right to search a Canadian citizen has been given to IOs, officers must exercise caution not to be put in the position of having illegally detained a Canadian citizen.

You should feel free to consult the RCMP or Revenue Canada, Customs, Excise and Taxation (Customs) before authorizing the search. In all instances a search of a Canadian citizen should be conducted by either Customs or the RCMP.

13. OTHER PROCEDURES

13.1 Unaccompanied minors and incompetents

The duty of fairness precludes your processing minors and others incapable of properly representing themselves without some capable person representing their interests. In any case involving an unaccompanied minor or a suspected incompetent person, you must arrange for proper representation as soon as practicable in accordance with local or regional guidelines.

13.2 Included dependants

An adjudicator at inquiry may include dependant children in a removal order [A33(1)]. The Act contains no similar authority allowing an SIO making an exclusion order [A23(4)], a departure order [A27(4)] or a conditional departure order [A28(1)] to include dependant children in these orders. Since the Act provides that the order be made against the person about whom you have received a report, you cannot include dependants in an administrative order. Each dependant must be the subject of an individual report.

13.3 Charter arguments

You may occasionally be asked in the course of determining the validity of an allegation or the eligibility of a claim to rule on the constitutionality of certain provisions of the Act. You may also be asked to delay eligibility or admission procedures so that the person concerned may make an application to the Court on the constitutionality of a provision of the Act.

Your jurisdiction under the Act is limited, and involves applying the Act in an administrative setting. You do not have jurisdiction to hear and decide *Charter* issues under the *Constitution Act*, nor can you grant remedies sought under the *Charter* [*Charter*, ss. 24, 52].

You should respond as follows if you are asked to rule on the constitutionality of a provision under the Act:

Senior Immigration Officers do not have the jurisdiction to deal with *Charter* issues under section 52 of the *Constitution Act*. Furthermore, Senior Immigration Officers are not considered a court of competent jurisdiction and as such cannot grant remedies sought under section 24 of the *Charter*.

Your decision on eligibility or admissibility can be reviewed by the Federal Court upon successful application by the person concerned. The court is the proper venue for an application of relief under the *Charter*. Do not permit a delay of eligibility or admissibility procedures for the purpose of a court application.

13.4 Judicial review

Your decisions are subject to judicial review, with leave, by the Federal Court—Trial Division. A review is commenced when an application for leave is filed with the court. Under the *Federal Court Immigration Rules, 1993*, “tribunal” is defined as the person or body whose decision, order, act or omission is the subject of an application. This means that you are considered to be a tribunal by the Federal Court and you are placed under certain obligations to provide information to the court.

If you are presented with proof that an application for judicial review has been filed with the Federal Court concerning an order or decision you made, send a copy of the application to the regional officer responsible for Federal Court litigation.

When applications for leave are filed, the court may ask you to provide certain documents to the court registry and to the parties under rules 9, 14 and 17 of the *Federal Court Immigration Rules, 1993*.

You should follow your region's standard procedures to comply with whatever order the court may make for producing documents. If you need assistance to comply with an order, contact your regional litigation co-ordinator. You are likely to encounter three kinds of requests from the Federal Court.

a) Requests under rule 9

If a person indicates in an application for leave that the reasons for the decision which is to be challenged have not been received, the court will order that they be provided, if they exist.

On receiving an order, you are required to send a copy of the decision or order, and written reasons for it, certified by an appropriate officer to be a true copy, to each of the parties, and two copies to the court registry.

If you did not give reasons for the decision or order or you gave reasons but did not record them, you must send an appropriate written notice to all the parties and the registry.

b) Requests under rule 14

You may be ordered by a judge to produce and file any additional documents that a judge may feel are necessary to dispose of the leave application before the court. The order will specify the material to be provided and you must provide it without delay. Send a copy of the material, certified by an appropriate officer to be a true copy, to each of the parties, and two copies to the court registry.

c) Requests under rule 17

When the court grants an application for leave, you will be served with a copy of the order granting leave immediately after the order is made. The order will require that you prepare and forward a record of the proceedings to the court and to the parties to the application. The record will consist of the following:

- the decision or order in respect of which the application is made and the written reasons you gave, if any
- all papers relevant to the matter that are in your possession
- any affidavits, or other such documents, filed during the hearing process, and
- a transcript, if any, of any oral testimony given during the hearing, that gave rise to the decision or order which is the subject of the application

You must prepare a record in accordance with these guidelines. Since your proceedings are not a matter of record, you need not enclose a transcript in the record.

You, or the officer designated to fulfil this function, will send a certified true copy of this record to each of the parties and two copies to the Federal Court registry [*Federal Court Immigration Rules, 1993, rule 17*]. Any questions concerning the materials to be sent to the court should be directed to the designated regional officer responsible for litigation.

13.5 Admissibility on humanitarian and compassionate grounds

The requirement that persons apply for and obtain immigrant visas outside Canada remains basic to the Act [A9(1)]. Circumstances may exist, however, where the requirement to apply for a visa from outside Canada may cause undue hardship for the applicant. Subsection 114(2) of the Act enables the Minister to assist the admission of persons on compassionate or humanitarian grounds.

The courts have confirmed that IOs are under a duty to consider requests for an exemption under A114(2) from the visa requirement of A9(1) on compassionate or humanitarian grounds [*Minister of Employment and Immigration v. Jimenez-Perez*, [1985] 1 W.W.R. 577 (S.C.C.)]. The proper exercise of discretion under A114(2) is consistent with the Act's objective of upholding Canada's humanitarian tradition. Refer to the latest instructions on conducting humanitarian and compassionate reviews for procedural guidance.

13.6 Claims to Canadian citizenship

Canadian citizens have a right to come into Canada [A4(1)], and cannot be removed from Canada. The burden of proof regarding Canadian citizenship is on the person claiming it.

In the course of reviewing a report, if you receive a claim that a person who is the subject of a report is a Canadian citizen, you should cause an investigation of this matter before issuing an administrative removal order or referring the matter to an adjudicator for inquiry. Section 2. of chapter PE 3 includes further information on investigating citizenship.

13.7 Claims to permanent residence

A permanent resident is a person who has been granted landing, who has not become a Canadian citizen, and who has not ceased to be a permanent resident under A24 or A25.1 [A2(1)]. The definition includes a person who has become a Canadian citizen but has ceased to be such by virtue of s. 10(1) of the *Citizenship Act*, without reference to s. 10(2) of that Act.

A25.1 is expected to come into force in 1994 by separate proclamation of the Governor in Council. Until then, returning-resident permits will continue to be issued in Canada and abroad with current criteria for establishing, retaining and abandoning permanent residence.

Persons who are permanent residents have the right to come into or to remain in Canada under A4, unless it is established at inquiry that they are described in A27(1).

Examining officers should report persons whom they believe are no longer permanent residents of Canada by using A19(2)(d) for A9(1) and A24, thus ensuring that such persons are sent to an inquiry.

For more information on the loss of permanent residence, see section 4. of chapter PE 3.

APPENDIX A
SAMPLE OF IMM 1282 (12-92) B - ALLOWED TO LEAVE CANADA



Employment and Immigration Canada
Emploi et Immigration Canada

PROTECTED WHEN COMPLETED
PROTÉGÉ UNE FOIS REMPLI - A

ALLOWED TO LEAVE CANADA
AUTORISATION DE QUITTER LE CANADA

Date
FOSS ID No. - N° du SSOBL

Surname - Nom de famille				Given Names - Prénom(s)				File No. - N° de référence			
Date of Birth Date de naissance		D-J M Y-A		Country of Birth - Pays de naissance				Country of Citizenship - Pays de citoyenneté			

I am of the opinion that it would, or may be, contrary to the Immigration Act, or the Immigration Regulations, to grant admission to you, or otherwise let you come into Canada.

Therefore, pursuant to

- ☐ paragraph 20 (1)(b)
☐ paragraph 23 (4)
☐ paragraph 23 (4.2)(b)

of the Immigration Act, I am allowing you to leave Canada forthwith. No inquiry has been caused in respect of this matter.

The information provided on this form is collected under the authority of the Immigration Act for the purpose of allowing you to leave Canada. This information will be stored in Personal Information Bank number EIC PPU 270, Enforcement Data System, and you have the right of access to it and to its protection under the provisions of the Privacy Act.

Je suis d'avis qu'il serait, ou qu'il peut être, contraire à la Loi sur l'immigration ou au règlement sur l'immigration de vous accorder l'admission, ou de vous laisser, par ailleurs, entrer au Canada.

Par conséquent, conformément à

- ☐ l'alinéa 20 (1) b)
☐ l'alinéa 23 (4)
☐ l'alinéa 23 (4.2) b)

de la Loi sur l'immigration, je vous autorise à quitter le Canada immédiatement. Aucune enquête n'a été tenue à ce sujet.

Les renseignements fournis dans le présent formulaire sont recueillis en vertu de la Loi sur l'immigration aux fins de vous autoriser de quitter le Canada. Les renseignements seront versés dans le fichier de renseignements personnels CEI PPU 270, Système de données sur l'exécution de la Loi. Ils sont protégés et accessibles en vertu des dispositions de la Loi sur la protection des renseignements personnels.

Signature of Immigration Officer (A20 (1)(b) case)
Signature de l'agent d'immigration (pour le cas visé au L20 (1) b))

Signature of Senior Immigration Officer (A23 (4) or A23(4.2)(b) cases)
Signature de l'agent principal (pour les cas visés au L23 (4) ou L23(4.2)b))

IMM 1282 (12-92) B

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

Canada

PERSON CONCERNED
PERSONNE CONCERNÉE

1

APPENDIX B

REQUESTING THE MINISTER'S OPINION UNDER A46.01(1)(e)(i) AND A46.01(1)(e)(ii)

1. REQUESTING THE MINISTER'S OPINION

The purpose of A46.01(1)(e)(i) and A46.01(1)(e)(ii) is to exclude persons from the refugee determination process to whom Canada does not have any legal obligation under the Convention.

1.1 Danger to the public [A46.01(1)(e)(i)]

The fact that the Minister's opinion is required to exclude persons convicted of serious crimes from our refugee determination system recognizes that not all persons convicted of crimes necessarily pose a danger to the public. For example, the offence may have taken place a long time ago. You need to assess whether the person is currently a danger to the public.

Your assessment should be based on observing the person's behaviour during immigration proceedings, and on information from medical or police sources which indicates that the individual currently poses a danger to the public. Whether the person concerned has demonstrated that he or she is rehabilitated is an essential fact for you to consider before seeking a Minister's opinion.

For you to make a reasonable and convincing argument that a person is a danger to the public in Canada [A46.01(1)(e)(i)], that person should, ideally, be detained or in jail. At the very least, the case presenting officer (CPO) should be seeking to detain or continue to detain the person on the grounds that he or she is a danger to the public. If the CPO is unsuccessful in obtaining an order to detain at the beginning of the inquiry, the CPO should request detention at the time that the opinion is received.

1.2 Contrary to the public interest [A46.01(1)(e)(ii)]

In most cases involving public interest [A46.01(1)(e)(ii)], you will be applying for an A40.1 certificate as evidence that the person is described as alleged. The evidence required to support an application for an A40.1 certificate should be sufficient to meet the requirements for a Minister's opinion that it is not in the public interest to have the refugee claim determined in Canada. Thus you should seek the Minister's opinion at the same time as you request an A40(1) or A40.1 certificate.

2. EVIDENCE REQUIRED TO SEEK THE MINISTER'S OPINION

2.1 Danger to the public [A46.01(1)(e)(i)]

For cases where you and your supervisor believe that it is appropriate to seek the Minister's opinion under A46.01(1)(e)(i), you should prepare a memorandum for your manager's signature, addressed to the Chief of the relevant bureau of the Case Management Branch, National Headquarters, with a copy to the appropriate regional official.

The memorandum should outline all pertinent information and include copies of all supporting documents. The supporting evidence should include, as appropriate:

- a conviction certificate
- warrant of committal
- reasons for conviction or sentence to confirm a conviction
- records of mental illness
- Health and Welfare medical reports
- psychiatric evaluations or certificates
- police reports, and
- any data concerning incidents of physical violence showing that the person could be a danger to the public.

The information on the person's convictions or violent acts should consist of the best evidence possible. Direct evidence is preferable, including statutory declarations by witnesses of the person's acts, and official documentation such as police or prison occurrence reports and transcripts of the trial and sentencing hearings. The accuracy or sufficiency of the evidence may be challenged in legal proceedings, and so the evidence should be able to sustain judicial review.

2.2 Contrary to the public interest [A46.01(1)(e)(ii)]

In most cases requiring the Minister's opinion on whether or not it is in the public interest to hear the claim, you will be dealing with the Security Review Section of the Case Management Branch, National Headquarters, to obtain an A40 or A40.1 certificate. Your memorandum of request for an A40 or A40.1 certificate should include a request for a Minister's opinion under A46.01(1)(e)(ii). Both the certificate and Minister's opinion should be issued simultaneously, because the evidence for a certificate should be sufficient for the Minister to offer an opinion.

Promptness is essential, especially in port-of-entry and detained cases. Send memoranda of request and supporting evidence urgently by facsimile.

3. NOTICE TO THE PERSON CONCERNED

The decision-making process whereby a Minister's opinion is made and issued to the person must adhere to the basic principles of procedural fairness. The duties of procedural fairness oblige the manager to advise the person of the information which is before the decision-maker and to give the person an opportunity to rebut such information. As soon as your manager has decided to seek a Minister's opinion, you should notify the person concerned in writing.

The notification should:

- outline in detail the information upon which the opinion is being sought
- advise that the person has 15 calendar days to forward written representations to the manager for the Minister's consideration. The 15-day period does not include the day of service but includes the fifteenth day; where the last or fifteenth day falls on a holiday, the last day is deemed to be the next working day, and
- explain the consequences should an opinion be made.

Section 6 below gives suggested wording for these requirements.

4. EXTENSION OF TIME

Your manager will deal with extensions of the 15-day period on a case-by-case basis. In exceptional circumstances only, the CIC manager may, after consultation with the Case Management Branch, extend the time allowed.

5. SERVICE OF NOTICE

Service of the notice on the person concerned shall be by personal service: that is, hand to hand by an IO with a signed acknowledgement of receipt, or by bailiff. The notice is effective immediately upon service.

6. SUGGESTED WORDING FOR THE NOTICE TO THE PERSON CONCERNED

To: *full name of person*

Take notice that the Minister of Employment and Immigration ("the Minister") is or will be considering whether you are a person who constitutes a danger to the public for the purpose of excluding you from the refugee determination process as described in subparagraph 46.01(1)(e)(i) of the Immigration Act, in that

whichever is appropriate: you are a person described in paragraph 19(1)(c) of the Immigration Act.

or you are a person who has been convicted in Canada of an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more.

or you are a person described in paragraph 19(1)(c.1)(i) of the Immigration Act.

or you are a person who there are reasonable grounds to believe has been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence that may be punishable under an Act of Parliament by a maximum term of imprisonment of ten years or more.

This consideration is based on your conviction for the following offence:

You have been convicted under *name of statute or Act of Parliament*, as appropriate on date in place of conviction of offence, in that you particulars of offence.

whichever is applicable: This is an offence for which a maximum term of imprisonment of number years may be imposed.

or This is an offence which could constitute, in Canada, an offence that may be punishable under section and name of the Act of Parliament and for which a maximum term of imprisonment of number years or may be imposed.

Based on your conviction and on list details of all other information pertinent to the determination that a person constitutes a danger to the public in Canada, the Minister may be of the opinion that you constitute a danger to the public in Canada.

Be advised that you, or your counsel on your behalf, have 15 days from give date on which service will be effected to make written representations to the Minister at give CIC address. You may wish to comment on the accuracy and correctness of the information on the basis of which an opinion under subparagraph 46.01(1)(e)(i) of the Immigration Act is sought, or any other information relevant to the issue.

Your representations, if any, will be given due consideration by the Minister in determining whether or not you constitute a danger to the public and should be excluded from the refugee determination process.

Should no representations be made to the Minister on your behalf within the 15-day period, a decision will be made on this matter without further notice.

A person who constitutes a danger to the public in Canada in the opinion of the Minister, pursuant to subparagraph 46.01(1)(e)(i) of the Immigration Act, is not eligible to have his or her claim to refugee status determined by the Convention Refugee Determination Division.

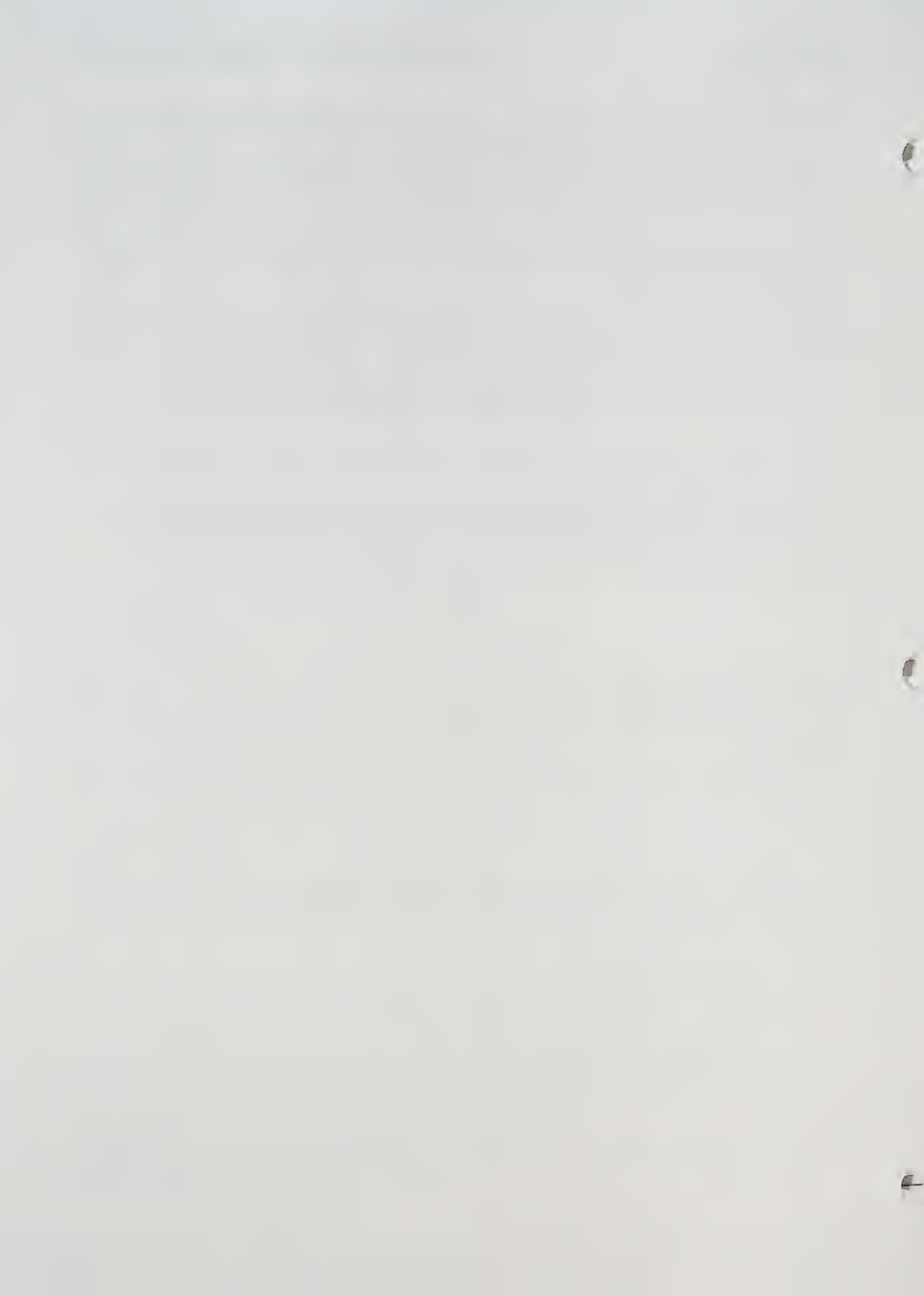
Dated this number day of month, year, in the city of name, province of name.

signature

Manager

7. FORWARDING REPRESENTATIONS

On receiving written representations from the person concerned, the manager should send a copy by facsimile to the Chief of the appropriate geographic bureau, Case Management Branch, National Headquarters.



APPENDIX C
ADDRESSES OF IRB OFFICES

Administration only

Immigration and Refugee Board
240 Bank Street
Ottawa, Ontario K1A 0K1
Tel: (613) 995-6486
Fax: (613) 952-9083

**The Atlantic Provinces, Québec, and the Regional
Municipality of Ottawa-Carleton (IAD and
CRDD)**

The Registrar
Immigration and Refugee Board
Montréal Regional Office
Complex Guy Favreau
200 René Lévesque Boulevard West
East Tower, Room 102
Montréal, Québec H2Z 1X4
Tel: (514) 283-7733
Fax: (514) 283-0164

**Ontario, except the Regional Municipality of
Ottawa-Carleton (IAD and CRDD)**

The Registrar
Immigration and Refugee Board
Toronto-Front Regional Office [IAD and
CRDD]
1 Front Street West, 5th Floor
Toronto, Ontario M5J 1A5
Tel: (416) 973-6035
Fax: (416) 973-9307

The Registrar
Immigration and Refugee Board
Toronto-University Regional Office [CRDD]
70 University Avenue, 7th Floor
Toronto, Ontario M5J 2M5
Tel: (416) 954-1064
Fax: (416) 973-1165

Alberta and Northwest Territories (CRDD)

The Registrar
Immigration and Refugee Board
Calgary Regional Office
205 - 9th Avenue S.E., 9th Floor
Calgary, Alberta T2G 0R3
Tel: (403) 292-6134
Fax: (403) 292-6131

**Alberta and Northwest Territories (IAD)
British Columbia and Yukon (IAD and CRDD)**

The Registrar
Immigration and Refugee Board
Vancouver Regional Office
800 Burrard Street, Suite 1600
Vancouver, B.C. V6Z 2J9
Tel: (604) 666-5946
Fax: (604) 666-3043

Manitoba and Saskatchewan (IAD and CRDD)

The Registrar
Immigration and Refugee Board
Winnipeg Regional Office
185 Carlton Street, 3rd Floor
Winnipeg, Manitoba R3C 3J1
Tel: (204) 949-3553
Fax: (204) 983-8525

APPENDIX D

SAMPLE OF IMM 1238 (12-92) B – DIRECTION TO RETURN TO THE UNITED STATES UNDER
SUBSECTION 23(5) OF THE IMMIGRATION ACT



Employment and
Immigration Canada

Emploi et
Immigration Canada

NOTED WHEN COMPLETED
NOTÉ QUAND REMPLI - A

**DIRECTION TO RETURN TO THE UNITED STATES
(UNDER SUBSECTION 23(5) OF THE IMMIGRATION ACT)**

**ORDONNANCE DE RETOURNER AUX ÉTATS-UNIS
(AUX TERMES DU PARAGRAPHE 23(5) DE LA LOI SUR L'IMMIGRATION)**

Surname - Nom de famille			Given Names - Prénom(s)			File No. - N° de référence	Client ID - ID du client
Date of Birth Date de naissance	D-J	M	Y-A	Country of Birth - Pays de naissance	Country of Citizenship - Pays de citoyenneté		
Permanent or Temporary Address in the United States - Adresse permanente ou temporaire aux États-Unis							

I have received a report under subsection 20(1) of the Immigration Act (hereinafter called the Act) from an Immigration Officer. A copy of the report is attached.

J'ai reçu d'un agent d'immigration un rapport, dont vous trouverez un double ci-joint, établi en vertu du paragraphe 20(1) de la Loi sur l'immigration (ci-après appelée la Loi).

Pursuant to paragraph 23(4.2)(a) of the Act, I hereby cause an inquiry to be held concerning you as soon as reasonably practicable.

Je fais par les présentes procéder à une enquête à votre sujet, conformément à l'alinéa 23(4.2)a) de la Loi, dès que les circonstances le permettent.

Because an Adjudicator is not available to preside at the inquiry, pursuant to subsection 23(5) of the Act, I direct that you return to the United States until an Adjudicator is available.

Comme aucun arbitre n'est disponible pour présider l'enquête, conformément au paragraphe 23(5) de la Loi, je vous ordonne de retourner aux États-Unis en attendant qu'il soit possible d'en trouver un disponible.

An Adjudicator will be available at

Un arbitre sera disponible à

Location (address of CIC) - Endroit (adresse du CIC)

Date

Time - Heure

at which time the inquiry will commence. If you desire to continue with your request for admission to Canada, please return on the date and time mentioned above.

pour débiter l'enquête. Si vous désirez toujours solliciter l'admission au Canada, veuillez vous présenter de nouveau à la date et à l'heure indiquées ci-dessus.

The information provided on this form is collected under the authority of the Immigration Act for the purpose of serving a direction to return to the United States on you. This information will be stored in Personal Information Bank number EIC PPU 270, Enforcement Data System, and you have the right of access to it and to its protection under the provisions of the Privacy Act.

Les renseignements fournis dans le présent formulaire sont recueillis en vertu de la Loi sur l'immigration aux fins de vous signifier une ordonnance de retourner aux États-Unis. Les renseignements seront versés dans le fichier de renseignements personnels CEI PPU 270, Système de données sur l'exécution de la Loi. Ils sont protégés et accessibles en vertu des dispositions de la Loi sur la protection des renseignements personnels.

Affix
Photograph
Apposer la
photographie

Senior Immigration Officer - Agent principal

Date

Port of Entry - Point d'entrée

cc. file
cc. dossier

All details of this form should be entered in FOSS as a status entry.
Tous les renseignements figurant sur ce formulaire doivent faire l'objet d'une entrée du statut au SSOBL.

IMM 1238 (12/92) B

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

Canada

APPENDIX E
SAMPLE OF IMM 514 (05-92) B - CASH DEPOSIT

Employment and Immigration Canada Emploi et Immigration Canada		B 80264 PROTECTED WHEN COMPLETED PROTÉGÉ LORSQU'IL EST REMPLI - A	
CASH DEPOSIT DÉPÔT EN ESPÈCES			
DEPOSITED BY - DÉPOSÉ PAR _____		CIC NUMBER - N° DE RÉFÉRENCE DU CIC _____	
ADDRESS - ADRESSE _____		NAME OF CIC - NOM DU CIC _____	
THE SUM OF - LA SOMME DE _____		CANADIAN DOLLARS EN DOLLARS CANADIENS \$ 100	U.S. DOLLARS EN DOLLARS US \$
AMOUNTS IN FOREIGN FUNDS WILL BE CONVERTED TO CANADIAN DOLLARS - LES MONTANTS EN MONNAIES ÉTRANGÈRES SERONT CONVERTIS EN MONNAIES CANADIENNES			
AS A SECURITY DEPOSIT UNDER THE IMMIGRATION ACT, IN RESPECT OF THE - COMME CAUTIONNEMENT AUX TERMES DE LA LOI SUR L'IMMIGRATION À L'ÉGARD DE			
<input type="checkbox"/> RELEASE UNDER SECTION LA LIBÉRATION EN VERTU DE L'ARTICLE _____	OF - DE _____	NAME OF PERSON CONCERNED NOM DE LA PERSONNE CONCERNÉE _____	
<input type="checkbox"/> ENTRY UNDER SECTION L'AUTORISATION DE SÉJOUR ACCORDÉE EN VERTU DE L'ARTICLE _____	OF - À _____		
<input type="checkbox"/> IMPOSITION OF CONDITIONS UNDER SECTION L'IMPOSITION DE CONDITIONS EN VERTU DE L'ARTICLE _____	UPON - À _____		
UPON THE CONDITIONS HEREINAFTER INDICATED - SELON LES CONDITIONS ÉNONCÉES CI-DESSOUS			
SIGNATURE OF DEPOSITOR - SIGNATURE DU DÉPOSANT _____		SIGNATURE OF AUTHORIZING OFFICER / NOMINÉ DÉPOSER SIGNATURE DU FONDS DE POUVOIR EXERÇANT LE DÉPÔT _____	WITNESS - TÉMOIN _____
SIGNED AT FAIT À _____	IN THE PROVINCE OF DANS LA PROVINCE DE _____	THIS EN CE _____	DAY OF JOUR DE _____ 19
OFFICIAL RECEIPT RÉÇU OFFICIEL			
<input type="checkbox"/> REPLACES PREVIOUS CASH SECURITY DEPOSIT NO. REMPLACE LE CAUTIONNEMENT EN ESPÈCES ANTÉRIEUR N° _____	FOR THE SAME AMOUNT. DU MÊME MONTANT. _____		
OR - OU _____			
<input type="checkbox"/> REPLACES PREVIOUS CASH SECURITY DEPOSIT NO. REMPLACE LE CAUTIONNEMENT EN ESPÈCES ANTÉRIEUR N° _____	IN THE AMOUNT OF \$ _____		
OR - OU _____			
<input type="checkbox"/> I, SIGNED _____ NOM DE L'AGENT D'IMMIGRATION / CAISSIER	ACKNOWLEDGE RECEIPT OF THE ABOVE CASH SECURITY DEPOSIT FROM: ACCUSE RÉCEPTION DU CAUTIONNEMENT EN ESPÈCES CI-DESSUS:		
NAME OF IMMIGRATION OFFICER / CAISSIER NOM DE L'AGENT D'IMMIGRATION / CAISSIER _____	<input type="checkbox"/> THE ABOVE NAMED DEPOSITOR DU DÉPOSANT SUSCRIT		
SIGNATURE OF IMMIGRATION OFFICER / CAISSIER _____	OR - OU DE _____		
DATE _____	<input type="checkbox"/> WHO IS AN AGENT OF THE ABOVE NAMED DEPOSITOR MARQUÉ TAUX DU DÉPOSANT SUSCRIT		
IMM 514 (1-92) B THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION - FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION SEE PRIVACY STATEMENT ON THE REVERSE - VOIR AU VERSO L'ÉNONCÉ PORTANT SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS			
		DEPOSITOR - DÉPOSANT 1	
ACKNOWLEDGE RECEIPT OF THE ABOVE CASH SECURITY DEPOSIT FROM THE IMMIGRATION OFFICER NAMED ABOVE ACCUSE RÉCEPTION DU CAUTIONNEMENT EN ESPÈCES DE L'AGENT D'IMMIGRATION SUSCRIT			
SIGNATURE OF DEPOSITOR / SIGNATURE DU DÉPOSANT _____			
DATE _____			
CIC / OFFICE - CIC / BUREAU _____			
CANADIAN DOLLAR AMOUNT OF CASH DEPOSIT MONTANT DU DÉPÔT EN ESPÈCES EN MONNAIE CANADIENNE _____			
COPY OF REVENUE JOURNAL MUST ACCOMPANY THIS DEPOSIT - UNE COPIE DU JOURNAL DES RECETTES (JRD) DOIT ACCOMPAGNER CE DÉPÔT			
IMM 514 (1-92) B THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION - FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION SEE PRIVACY STATEMENT ON THE REVERSE - VOIR AU VERSO L'ÉNONCÉ PORTANT SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS			
		CHIEF, REVENUE ACCOUNTING - INNO, EMPLOYMENT AND IMMIGRATION CANADA, OTTAWA, ONT. K1A 8J9 2 CHIEF, COMPTABILITÉ DU REVENU - AC, EMPLOI ET IMMIGRATION CANADA, OTTAWA (ONT.) K1A 8J9	

APPENDIX F
SAMPLE OF FIN 3160 (10-90) - REVENUE JOURNAL

EMPLOYMENT AND IMMIGRATION CANADA Emploi et Immigration Canada		SOURCE COUNTRY PAYS D'ORIGINE		FINANCIAL CODE - CODE FINANCIER S.C. ACTIVITE A. C. ACTIVITE		FISCAL YEAR ANNEE FISCALE		REVENUE JOURNAL JOURNAL DES RECETTES		SUPPLEMENTARY FIELD ZONE SUPPLEMENTAIRE	
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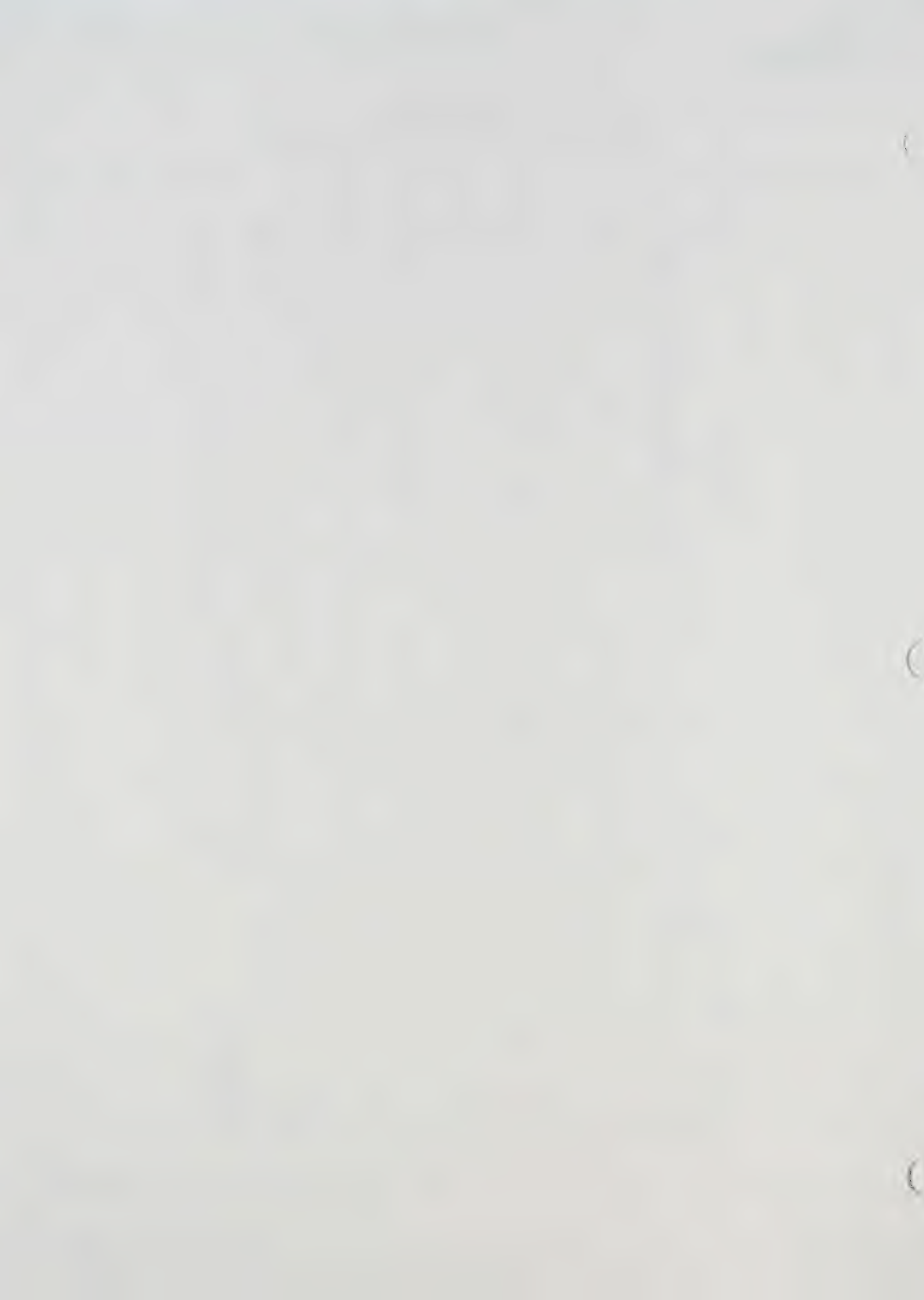
Canada
EIS - SIEI 1
ORIGINATOR - ORIGINATEUR 2

PREPARED BY - PREPARE PAR
DATE

AMOUNT - MONTANT	D/J	M	Y-A
AMOUNT - MONTANT			
AMOUNT - MONTANT			

TOTAL CURRENT YEAR AMOUNT MONTANT TOTAL ANNEE EN COURS
TOTAL CURRENT YEAR AMOUNT MONTANT TOTAL ANNEE EN COURS

* TYPE - GENRE
05 EXPENDITURE RECEIPT
06 RECEIPT RECEIPT
1) RECEIPT RECEIPT
12 RECEIPT RECEIPT



APPENDIX G
SAMPLE OF IMM 60 (05-89) B - LOCAL VISITOR CONTROL



Employment and Immigration Canada Emploi et Immigration Canada

LOCAL VISITOR CONTROL - FICHE DE CONTRÔLE LOCAL DES VISITEURS
DOCUMENTATION OF GROUPS OF 15 OR MORE VISITORS EXEMPTED FROM SECTION 18 OF THE REGULATIONS
INSCRIPTION DES GROUPES D'AU MOINS 15 VISITEURS DISPENSÉS DE L'ARTICLE 18 DU RÈGLEMENT

NOTE:

- Although exempt from the provisions of Regulation 18 by virtue of paragraph 19(1)(d) of the Regulations, such groups of 15 or more artists are to be documented on IMM 60 VP-P for local control and bonding purposes.
- An additional copy should be made for each unit of a group expecting to leave Canada at different parts or different times.
- After immigration examination, the original of this form and an extra copy for each portion of a group leaving Canada separately, will be returned to the person in charge of the group for presentation to a Canadian Immigration Officer at the port of departure.
- Persons intending to remain in Canada for more than three (3) months must report to a Canadian Immigration Officer.

REMARQUE:

- Bien qu'ils soient dispensés des dispositions de l'article 18 du Règlement aux termes de l'alinéa 19(1)d) du Règlement, ces groupes d'au moins quinze artistes doivent être inscrits sur l'IMM 60 VP-P pour des fins de contrôle local et de cautionnement.
- Un exemplaire supplémentaire doit être rempli pour chaque membre ou partie d'un groupe comptant quitter le Canada à divers points ou à différentes dates.
- Après l'examen de l'immigration, l'original du présent formulaire ainsi qu'un exemplaire supplémentaire pour chaque membre ou partie d'un groupe qui quitte le Canada séparément sera renvoyé au responsable du groupe qui devra les remettre à un agent d'immigration Canada au point de sortie.
- Les personnes qui comptent demeurer au Canada plus de trois mois doivent le signaler à un agent d'immigration Canada.

Group Name and Address
Nom et adresse des membres du groupe

Itinerary - (With Dates, if Space is Insufficient Attach a Complete Itinerary)
Itinéraire - (Indiquez les dates et, si l'espace est insuffisant, joignez un itinéraire complet)

In/Out Entrée/ Sortie	Surname Nom	Given Names Prénoms	Birth Né(e)	Citizen of Citoyen de	Home Address in Full Adresse domiciliaire au complet
	1.		D- J M Y-J		
	2.				
	3.				
	4.				
	5.				
	6.				
	7.				
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	9.				
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	17.				
	18.				
	19.				
	20.				

IMM 60 VP-P (05-89) B

Canada

(OVER - VERSO)

APPENDIX G **SAMPLE OF IMM 60 (05-89) B - LOCAL VISITOR CONTROL**

In/Out Entry/ sortie	Surname Nom <small>Alphabetical Order - Par ordre alphabétique</small>	Given Names Prénoms(s) <small>Alphabetical Order - Par ordre alphabétique</small>	Birth Néissance D-J M Y-A	Citizen of Citoyen de	Home Address in Full Adresse domiciliaire au complet
21.					
22.					
23.					
24.					
25.					
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40.					

If More Space is Required Use Additional IMM 60 VP-P
(Si vous avez besoin de plus d'espace, utilisez un autre IM 60 VP-P)

Signature of Person in Charge Signature du responsable		Manager's Name and Permanent Home Address Nom et adresse domiciliaire permanente du directeur	
Date of Original Entry - Date de l'entrée initiale	D-J M Y-A	Name of Office Nom du bureau	Allowed Entry Until Séjour autorisé jusqu'à
Remarks - Observations			
Bond No. (IMM 514) Cautionnement n° (IMM 514)		Signature of Immigration Officer - Port of Entry Signature de l'agent d'immigration - Point d'entrée	Signature of Immigration Officer - Port of Departure Signature de l'agent d'immigration - Point de sortie
		Date	Date

(DO NOT SEND A COPY TO NHQ UNLESS IMM 514 IS ISSUED)
(À MOINS QU'UN IMM 514 NE SOIT DÉLIVRÉ, N'ENVOYER AUCUNE COPIE À L'A.C.)

APPENDIX H

SAMPLE OF IMM 709 (12-92) B - REQUISITION FOR REFUND/FORFEITURE OF CASH SECURITY DEPOSIT



Employment and Immigration Canada Emploi et Immigration Canada

PROTECTED WHEN COMPLETED - B
PROTÉGÉ UNE FOIS REMPLI

CANADA/IMMIGRATION
REQUISITION FOR REFUND / FORFEITURE
OF CASH SECURITY DEPOSIT

IMMIGRATION CANADA
DEMANDE DE REMBOURSEMENT / CONFISCATION
D'UN CAUTIONNEMENT EN ESPÈCES

ACT AND REGULATIONS — LOI ET RÈGLEMENT

For deposits taken under sections 18, 23 and 103 of the Immigration Act, see instruments I-12, I-25 and I-28 for delegations of authority.

Pour les gages déposés aux termes des articles 18, 23 et 103 de la Loi sur l'immigration, veuillez vous reporter aux documents officiels I-12, I-25 et I-28 pour les délégations de pouvoirs.

CIC — CIC

File No. — Référence

BOND/DEPOSIT — CAUTIONNEMENT/DÉPÔT

Receipt No. — Réçu n°

Date of Bond/Deposit — Date du cautionnement/dépôt

Amount — Montant

Name of Depositor — Nom du déposant

Current Mailing Address of Depositor — Adresse postale actuelle du déposant

Deposit Made on Behalf of — Cautionnement déposé au nom de

Under Section — Aux termes de l'article

☐ Is Directed for Reimbursement
Remboursement ordonné

☐ Is Declared Forfeited
Confiscation déclarée

☐ Previous Forfeiture is Reversed and Directed for Reimbursement
Confiscation antérieure annulée et remboursement ordonné

☐ Is Directed for Partial Reimbursement (attach a copy of the IMM 514)
Remboursement partiel ordonné (joindre une copie de l'IMM 514)

REMARKS — OBSERVATIONS

Signature of Authorizing Officer
Signature du fondé de pouvoir

Title as per Delegation Instrument
Titre conformément au document officiel de
délégation de pouvoir

Date

THE INFORMATION PROVIDED ON THIS FORM IS COLLECTED UNDER THE AUTHORITY OF THE IMMIGRATION ACT FOR THE PURPOSE OF REFUNDING/FORFEITING THE CASH DEPOSIT MADE BY THE DEPOSITOR NAMED ON THIS FORM ON BEHALF OF THE PERSON CONCERNED. IT IS PROTECTED BY THE PRIVACY ACT, IS ACCESSIBLE TO THE PERSONS CONCERNED AND WILL BE STORED IN PERSONAL INFORMATION BANK NUMBER EIC PPU 285.

LES RENSEIGNEMENTS FOURNIS DANS LE PRÉSENT DOCUMENT SONT RÉCUEILLIS EN VERTU DE LA LOI SUR L'IMMIGRATION AUX FINS DE REMBOURSEMENT/CONFISCATION DU DÉPÔT EN ESPÈCES EFFECTUÉ PAR LE DÉPOSANT NOMMÉ DANS LE FORMULAIRE AU NOM DE LA PERSONNE CONCERNÉE. ILS SONT PROTÉGÉS PAR LA LOI SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS ET SERONT VERSÉS DANS LE FICHIER DE RENSEIGNEMENTS PERSONNELS CEI PPU 285 QUE LES PERSONNES CONCERNÉES PEUVENT PAR AILLEURS CONSULTER.

Canada

APPENDIX I

SAMPLE OF IMM 1416 (03-84) B - SOLEMN DECLARATION OF SOLVENCY BY BONDSPERSON

L'emploi et l'immigration Canada Employment and Immigration Canada	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Référence n°</td> <td style="width: 40%;"></td> </tr> <tr> <td>Date</td> <td></td> </tr> </table>	Référence n°		Date									
Référence n°													
Date													
DECLARATION SOLENNELLE DE SOLVABILITÉ PAR LA CAUTION													
Voici l'objet des renseignements demandés dans le présent formulaire: appliquer la Loi sur l'immigration et déterminer si vous pouvez vous porter caution pour quelqu'un. Vous êtes libre de répondre aux questions. Toutefois, à cause de renseignements insuffisants concernant votre situation financière, il se peut que vous soyez considéré comme une personne qui ne peut cautionner quelqu'un. Si vous êtes citoyen canadien ou résident permanent, vous pouvez avoir une meilleure idée de l'utilisation de ces renseignements et de votre droit de les vérifier et de les faire modifier en consultant dans les grands bureaux de poste le Catalogue des banques fédérales de données. (Les renseignements recueillis se trouvent dans la banque Bank-P360.)													
JE, _____, DÉCLARE SOLENNELLEMENT CE QUI SUIT, À SAVOIR:													
Nom au complet (en caractères d'imprimerie)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Date de naissance</td> <td style="width: 40%;"></td> <td style="width: 30%;"></td> </tr> <tr> <td>Jour</td> <td>Mois</td> <td>Année</td> </tr> </table>	Date de naissance			Jour	Mois	Année						
Date de naissance													
Jour	Mois	Année											
Adresse	<input type="checkbox"/> Propriétaire des lieux <input type="checkbox"/> Locataire												
Description détaillée des autres effets immobiliers que je possède													
Nom et adresse de mon employeur													
Genre d'emploi exercé _____ Je travaille pour le compte de cet employeur depuis _____													
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"><input type="checkbox"/> J'ai une automobile</td> <td style="width: 10%;">▶</td> <td style="width: 20%;">Marque</td> <td style="width: 10%;">Année</td> <td style="width: 20%;">No. d'immatriculation</td> <td style="width: 25%;">No. du permis de conduire</td> </tr> <tr> <td colspan="6"><input type="checkbox"/> Je n'ai pas d'automobile</td> </tr> </table>		<input type="checkbox"/> J'ai une automobile	▶	Marque	Année	No. d'immatriculation	No. du permis de conduire	<input type="checkbox"/> Je n'ai pas d'automobile					
<input type="checkbox"/> J'ai une automobile	▶	Marque	Année	No. d'immatriculation	No. du permis de conduire								
<input type="checkbox"/> Je n'ai pas d'automobile													
Je fais affaire avec la (les) banque(s) suivante(s)													
Nom	Adresse												
Voir mes avoirs et mes dettes (montants approximatifs):													
AVOIRS	DETTES												
Propriété \$	Hypothèque(s) \$												
Meubles	Emprunt(s)												
Automobile(s)	Carte(s) de crédit												
Liquidités	Autres (précisez)												
Actions	1.												
Obligations	2.												
Certificats	3.												
Autres (précisez)	4.												
1.	1.												
2.	2.												
3.	3.												
4.	4.												
AVOIRS - TOTAL \$	DETTES - TOTAL \$												
REVENU MENSUEL \$	DÉPENSES MENSUELLES \$												
DIFFÉRENCE NETTE (TOTAL DES AVOIRS - TOTAL DES DETTES) ▶ \$													
et je fais cette déclaration solennelle croyant en conscience qu'elle est vraie et sachant qu'elle a la même force et les mêmes effets que si elle était faite sous serment.													
Je sais que par suite du non-respect de quelque condition que ce soit figurant dans le cautionnement un dépôt en espèces peut être confisqué ou un bon de garantie exécuté et que je devrai verser, sans délai, au Receveur général, le plein dédit exigé.	Signature du déclarant												
Déclaré devant moi _____ à _____	Signature de l'agent d'immigration												
dans la province de _____ ce _____ jour de _____ 19____	(English on reverse)												

Canada

APPENDIX J

SAMPLE OF IMM 1230 (01-93) B - PERFORMANCE BOND: THE IMMIGRATION ACT

PROTECTED WHEN COMPLETED - A



Employment and Immigration Canada Emploi et Immigration Canada

PERFORMANCE BOND
THE IMMIGRATION ACT

FOSS No.
File No.

In the matter of the Immigration Act (hereinafter called the Act) and
of _____
(Name of person)
KNOW ALL PERSONS BY THESE PRESENTS, that I, _____
(Name of person bound)
of _____
(Present address)
am held and firmly bound unto Her Majesty The Queen in right of Canada, Her Heirs and Successors in the penal sum of _____ dollars to
be paid to the Receiver General of Canada, for which payment I bind myself, my Heirs, Executors, and Administrators and everyone of them firmly by
these presents.
The condition of the obligation is such that if the said _____
(Name of person)

- ☐ who is being released from detention, pursuant to the Act, under
☐ 23(3)(b); ☐ 103(3)(a); ☐ 103(3.1)(a); ☐ 103(3); ☐ 103(7) ☐ other _____
AND
☐ in respect of whom terms and conditions have been imposed pursuant to the Act, under
☐ 14(3); ☐ 19(3); ☐ 23(2); ☐ 23(3)(d); ☐ 32(4); ☐ 103(3)(d); ☐ 103(3.1)(d); ☐ other _____
ABIDES BY THE FOLLOWING TERMS AND CONDITIONS:

then this obligation shall be void, but otherwise shall be and remain in full force and effect.
Dated at _____ this _____ day of _____ 19 _____.
Signed and delivered in the presence of:

(Signature of witness) _____
(Signature of person bound)
Required by me on the _____ day of _____ 19 _____.
In the province of _____

(Signature of authorized officer and title)
☐ This order made by adjudicator _____ Name _____ on _____ Date _____

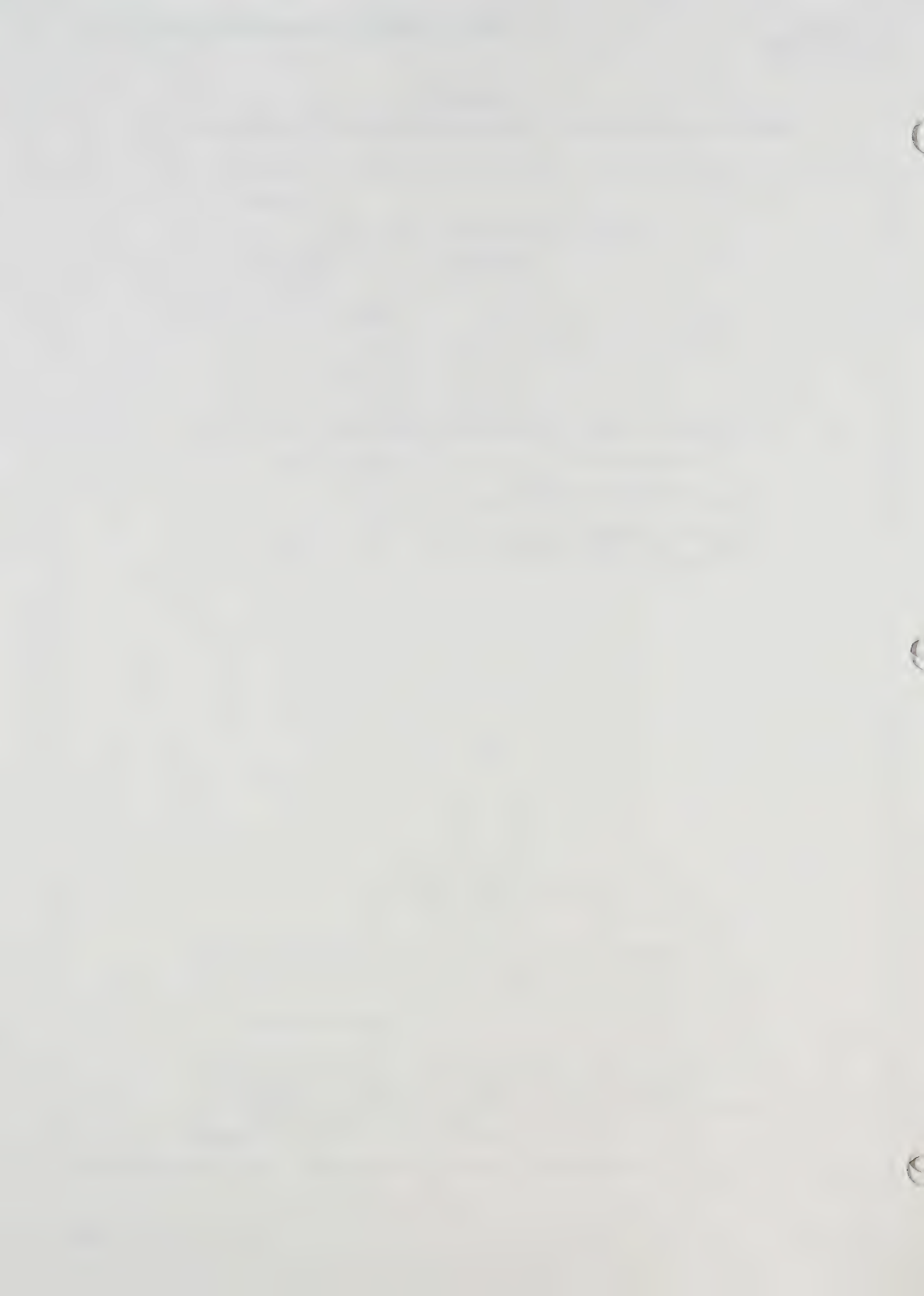
NOTICE

In the case of default or breach of any of the terms and conditions agreed to above legal proceedings may be taken to enforce the bond.

IMM 1230 (01-93) B

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FRANÇAIS AU VERSO

Canada



APPENDIX K

SAMPLE OF IMM 1259 (01-93) B - PERFORMANCE BOND: THE IMMIGRATION ACT (WHERE THERE ARE CO-SIGNERS)



Employment and Immigration Canada Emploi et Immigration Canada

PROTECTED WHEN COMPLETED - A

PERFORMANCE BOND
THE IMMIGRATION ACT
(Where there are CO-SIGNERS)

FOSS No.
File No.

In the matter of the Immigration Act (hereinafter called the Act) and
of _____
(Name of person)
KNOW ALL PERSONS BY THESE PRESENTS, that we _____
(Name of person jointly bound)
of _____
(Address)
and _____, of _____
(Name of person jointly bound) (Address)

be held and firmly bound unto Her Majesty The Queen in right of Canada, Her Heirs and Successors in the penal sum of _____ dollars in lawful money of Canada, for which payment we jointly and severally bind ourselves, our, and each of our heirs, executors, and administrators firmly by these presents.

The condition of the obligation is such that if the said _____
(Name of person)

- ☐ who is being released from detention, pursuant to the Act, under
☐ 23(3)(b); ☐ 103(2)(a); ☐ 103(3.1)(a); ☐ 103(3); ☐ 103(7) ☐ other _____
AND
☐ in respect of whom terms and conditions have been imposed pursuant to the Act, under
☐ 14(3); ☐ 19(3); ☐ 23(2); ☐ 23(3)(d); ☐ 32(4); ☐ 103(3)(c); ☐ 103(3.1)(d); ☐ other _____

ABIDES BY THE FOLLOWING TERMS AND CONDITIONS:

then this obligation shall be void, but otherwise shall be and remain in full force and effect.

Dated at _____ this _____ day of _____ 19 ____.

Signed and delivered in the presence of:

_____ (Signature of witness)	_____ (Signature of person bound)
_____ (Signature of witness)	_____ (Signature of person bound)

Required by me on the _____ day of _____ 19 ____ at _____
in the province of _____
(Signature of authorized officer and title)

☐ This order made by adjudicator _____ Name _____ on _____ Date _____

NOTICE

In the case of default or breach of any of the terms and conditions agreed to above legal proceedings may be taken to enforce the bond.

IMM 1259 (01-93) B

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION

FRANÇAIS AU VERSO

Canada

APPENDIX L

SAMPLE OF IMM 5012 (04-90) B - OPINION OF THE MINISTER (PURSUANT TO 103.1(12) OF THE
IMMIGRATION ACT



Employment and
Immigration Canada

Emploi et
Immigration Canada

PROTECTED WHEN COMPLETED - A
PROTÉGÉ UNE FOIS REMPLI - A

OPINION OF THE MINISTER
(PURSUANT TO 103.1(12) OF THE IMMIGRATION
ACT.

OPINION DU MINISTRE
(PARAGRAPHE 103.1(12) DE LA LOI SUR
L'IMMIGRATION.

I AM OF THE OPINION THAT

JE SUIS D'AVIS QUE

HAS SATISFACTORILY ESTABLISHED HIS IDENTITY

☐

A ÉDICTÉ SON IDENTITÉ AVEC CERTITUDE

IS NOT A PERSON DESCRIBED IN PARAGRAPH 19(1)(e), (f), (g) OR
(j) OF THE IMMIGRATION ACT.

☐

QU'IL (ELLE) N'EST PAS UNE PERSONNE VISÉE À L'UN DES ALINÉAS
19(1)e, f, g) OU j) DE LA LOI SUR L'IMMIGRATION.

DATED AT
DATÉ À

IN THE PROVINCE OF
DANS LA PROVINCE DE

THIS
EN CE

DAY OF
JOUR DE

19

MINISTER OF EMPLOYMENT AND IMMIGRATION
MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

IMM 5012 (04-90) B

Canada

APPENDIX M

SAMPLE OF IMM 1446 (04-90) B - CERTIFICATE PURSUANT TO SUBPARAGRAPH 103.1(2)(a)(i)
AND PARAGRAPH 103.1(2)(b) OF THE *IMMIGRATION ACT*

PROTECTED WHEN COMPLETED - A



Employment and Immigration Canada Emploi et Immigration Canada

CERTIFICATE PURSUANT TO SUBPARAGRAPH 103.1 (2) (a) (i) AND PARAGRAPH
103.1 (2) (b) OF THE IMMIGRATION ACT

This is to certify that the identity of _____
detained pursuant to subsection 103.1 (1) of the Immigration Act, has not been established and that
an additional period of detention is required to investigate his or her identity.

Dated at _____
in the province of _____
this _____ day of _____ 19____

Minister of Employment and Immigration

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION

IMM 1446 (04-90) B

Canada



APPENDIX N

SAMPLE OF IMM 5004 (04-90) B - CERTIFICATE PURSUANT TO SUBPARAGRAPH 103.1(2)(a)(ii)
AND PARAGRAPH 103.1(2)(b) OF THE IMMIGRATION ACT



Employment and Immigration Canada Emploi et Immigration Canada

CERTIFICATE PURSUANT TO SUBPARAGRAPH 103.1(2)(a)(ii) AND PARAGRAPH
103.1 (2)(b) OF THE IMMIGRATION ACT.

This is to certify that I have reason to suspect that _____
who is detained pursuant to subsection 103.1(1) of the Immigration Act, may be a member of an
inadmissible class described in paragraph 19(1)(e), (f), (g) or (j), of the Act and that an additional
period of detention is required to investigate this matter.

Dated at _____

in the Province of _____

this _____ day of _____ 19____

Minister of Employment and Immigration

IMM5004 (04-90) B

Canada

APPENDIX O

SAMPLE OF IMM 5003 (02-90) B - AMENDMENT OF CERTIFICATE PURSUANT TO SUBSECTION
103.1(3) OF THE IMMIGRATION ACT

PROTECTED WHEN COMPLETED



Employment and Immigration Canada Emploi et Immigration Canada

AMENDMENT OF CERTIFICATE PURSUANT TO SUBSECTION 103.1(3)
OF THE IMMIGRATION ACT

Whereas _____, hereinafter called "the person", is
detained pursuant to subsection 103.1(1) of the Immigration Act and a certificate has been issued
in accordance with subsection 103.1(2), I hereby amend the said certificate and certify that

☐ the person's identity has not been established,

☐ I have reason to suspect that the person may be a member of
an inadmissible class described in paragraph 19(1)(____),

and that the person's detention is required for an additional period to investigate the matter.

Dated at _____

in the Province of _____

this _____ day of _____ 19____

Minister of Employment and Immigration

IMM 5003 (02-90) B

Canada

APPENDIX P
COUNTRIES PRESCRIBED UNDER A114(1)(s)
[RESERVED]

IMMIGRATION

Canada

Chapter PE 11

Maritime Procedures





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Maritime Procedures

Abbreviations and Short Forms

Act	<i>Immigration Act</i> , as amended
ALFS	Automated Letter and Form System
CIC	Citizenship and Immigration Canada
CPIC	Canadian Police Information Centre
Customs	Revenue Canada, Customs, Excise and Taxation
FOSS	Field Operations Support System
IO	Immigration Officer
POE	Port of Entry
SIO	Senior Immigration Officer

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how an immigration officer handles examinations and alternative reporting at maritime ports of entry, examines persons seeking entry at other ports of entry to join ships as crew members, and assesses the obligations and liabilities of marine transportation companies for persons they convey to Canada.

1.2 Policy intent

Canadian immigration policy aims for maritime procedures are:

- to facilitate the entry of visitors into Canada to foster trade and commerce, tourism, cultural and scientific activities and international understanding
- to foster the development of a strong and viable economy and the prosperity of all regions in Canada, and
- to maintain and protect the health, safety and good order of Canadian society.

2. DOCUMENT EXEMPTIONS FOR CREW MEMBERS

Persons coming to Canada as members of a ship's crew, or to become members of a crew, are seeking entry as visitors to engage in employment. These persons do not require visitor visas, passports, or in most cases, employment authorizations, as follows:

- a) **visitor visas:** under s. 6 of Schedule II of the *Immigration Regulations*, this exemption applies to:
 - persons arriving at ports of entry who are defined under the Act as crew members, and
 - persons arriving to join a ship in Canada as crew members.
- b) **passports:** persons entering Canada as crew members or seeking entry to join ships as crew members do not require a passport, provided that they are in possession of a seaman's identity document issued under International Labour Organization conventions [*Immigration Regulations*, s. 14(4)(f)].
- c) **employment authorizations:** persons working as crew members of ships in Canada do not require an employment authorization, provided that the ship on which they are employed or are to join is of foreign ownership or registry and engaged in the international transportation of goods or passengers [*Immigration Regulations*, s. 19(1)(e)]. As an immigration officer (IO) at a port of entry (POE), you must not impose any condition prohibiting these persons from engaging in employment. Such a condition would contradict the Act's definition of employment.

Persons who are neither Canadian citizens nor permanent residents and who intend to work on Canadian-registered vessels or foreign-registered vessels engaged in the coasting trade require Canada Employment Centre validations and employment authorizations. The coasting trade is the carriage of goods or passengers by ship from one place in Canada, either directly or indirectly through a foreign port, to any other place in Canada, or the engaging by ship in any other marine activity of a commercial nature in Canadian waters. Foreign shipowners wishing to engage in this activity require coasting-trade licences issued by Revenue Canada, Customs and Excise (Customs), in co-operation with the National Transportation Agency. For further information see s. 2 of the *Coasting Trade Act*.

3. CREW MEMBERS ARRIVING ON SHIPS OF FOREIGN REGISTRY

Crew members aboard ships of foreign registry are not required to appear personally before you for examination at a maritime POE, unless you ask them to do so. You use the crew list required under s. 53(1) of the *Immigration Regulations* as an alternative manner of examination authorized under s. 12.2 of the *Immigration Regulations*.

3.1 Presentation of crew lists

A crew list is required from each foreign-registered vessel on its arrival in Canada, regardless of the number of crew members aboard. The ship's master should present the crew list on one of the following forms:

- Canadian Crew List (form IMM 200)
- a modified version of form IMM 200 with instructions and boxes for port stamp impressions printed on the reverse
- International Maritime Organization form IMO FAL 5, or
- a computer-generated form modelled on the IMM 200 or IMO FAL 5 form.

When a ship arrives in Canada, the master must give you an original crew list and at least one copy. The master must surrender one endorsed copy at the time of the ship's departure from Canada. If the master wishes to have an endorsed copy for the ship's records, he or she must give you a second copy of the list when the vessel arrives. Form IMM 200 automatically includes a second copy.

3.2 Delivering crew lists when an immigration officer does not board

Due to Customs' introduction of selective boarding procedures, Customs inspectors do not board the majority of ships on arrival. If neither a Customs inspector nor an IO boards, the master or ship's agent must deliver the crew list promptly to the nearest Customs office or Immigration office. In exceptional circumstances — when a ship arrives at a port without Customs or immigration services, for example — you may permit the ship's agent to send the list by facsimile to Customs or to your Immigration office, provided the necessary resources are available.

If the master sends the list by facsimile, he or she should send one copy, using the IMO FAL 5 or a computer-generated form. You should return an endorsed copy to the ship's agent by facsimile for presentation at the time of the ship's departure from Canada.

3.3 Persons to be named on the crew list

Under the Act's definition of "member of a crew", the crew list must include the names of all persons employed on the ship to perform duties related to the operation of the vehicle or the provision of services to passengers [A2].

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, section 2.

On a cargo ship, crew members include:

- licensed officers: master, first officer, chief officer or chief mate, first engineer or chief engineer, and subordinate officers and engineers, and

3.4 Persons not to be named on the crew list

- non-licensed crew: deck crew (ordinary seamen, able-bodied seamen and bosun), engine-room crew (oilers and fitters), and kitchen and mess-room staff (cooks, stewards and messmen).

On a cruise ship, crew members also include, as applicable, the hotel manager, cruise director, purser, medical staff, managers and staff of the ship's bars, restaurants, boutiques and casino, house-cleaning staff and entertainers.

On a fishing vessel, crew members include all persons involved in the processing of the catch.

The Act's definition of "member of a crew" does not include persons in the following categories; masters should not include them on crew lists, and they are not exempt from passport and visa requirements:

- supernumeraries: wives, children and other dependents of crew members
- workaways: passengers provided with transportation aboard a ship in exchange for work performed during the voyage
- foreign contractors and shipping company technicians: persons other than citizens or permanent residents of Canada temporarily assigned to a ship for the sole purpose of making repairs; they may already be aboard the vessel when it arrives, or may arrive at a POE with the intention of proceeding to the vessel
- shipping company superintendents, or supercargo: employees of a marine transportation company who travel aboard ships to inspect operations or to supervise the loading or unloading of cargo
- insurance company representatives: persons required to familiarize themselves with shipboard operations on behalf of shipowners' insurers, and
- meteorological officers: persons monitoring weather patterns whose presence aboard is unrelated to the navigation of the ship.

This list is not exhaustive, and there may be other categories of persons not meeting the Act's definition of "member of a crew". You must not exempt persons who are not crew members from passport and visa requirements because they claim that they do not intend to go ashore while the ship is in port. You should consider these persons to be seeking admission as soon as the vessel on which they are conveyed arrives at a POE, unless the ship's arrival was due to unforeseen circumstances, such as a medical or a weather emergency. In such a circumstance you may conclude that the persons are not seeking admission, and require the master to detain them on board under A90(2).

3.5 Verifying the crew list

Before an IO or Customs officer endorses a crew list, the officer should take one or more of the following steps until he or she is satisfied that it is accurate and complete under s. 53(1) of the *Immigration Regulations*:

- ensure that surnames are distinguishable from given names, and if two or more identical surnames appear on the list, that the master has not included the names of dependents
- look at the dates of birth to ensure that no person is either too young or too old to be a legitimate crew member

- compare the particulars on the crew list with the information contained in seaman's identity documents or passports, ensuring that names and dates of birth are accurate
- review the crew functions described under the list's *Rank or rating* column, and question the master about unclear terms or abbreviations
- compare the names on the crew list with the names of crew members in the ship's articles or on employment records, and
- conduct a crew muster, asking each person named on the list to come forward to be identified; compare the particulars in each travel document with the information supplied by each person who comes forward; ensure that the photograph in the document bears a general resemblance to the person before you.

A crew muster is an assembly of all crew members in one place on the ship. You can conduct it on the arrival or immediately before the departure of the ship to ensure that all persons named on the crew list are accounted for. You should not give the master advance notice of your intent to muster the crew. Give notice only when you arrive aboard. You should solicit the assistance of Customs inspectors for crew musters.

3.6 Errors on the crew list

If an IO or Customs officer detects minor inaccuracies on the crew list that are believed to be inadvertent, the officer should make the necessary corrections and initial the changes before endorsing the list. If the officer has reason to believe that the inaccuracies are due to negligence or to lack of due diligence, he or she should treat the matter as an offence under s. 54.1(g) of the *Immigration Regulations*. For instructions on reporting offences, see section 13. below. Report the offence to the local detachment of the RCMP for referral to the RCMP's Immigration and Passport Branch, using a Notification of Contravention of the *Immigration Act* or Regulations by a Transportation Company form (IMM 5248; see APPENDIX F of chapter PE 14, *Obligations and Liabilities of Transportation Companies*).

3.7 Deleting names from the crew list before endorsement

Before an IO or Customs officer endorses a crew list, he or she should draw a line in ink through the name of each person who:

- is not a crew member as defined in the Act, or
- is inadmissible to Canada.

The officer should write his or her initials at the beginning and end of each line that is deleted.

3.8 Actions after deleting names

As an IO at a POE, you must individually examine persons whose names were deleted because they are not crew members, to ensure that they meet all admission requirements.

If you determine a person to be inadmissible, including a crew member, you must either allow the person to leave Canada forthwith under A20(1)(b), or report the person to a senior immigration officer (SIO) under A20(1)(a). If you or the SIO allows the person to leave Canada forthwith, the master must detain the person on board under A90(2), unless satisfactory arrangements have been made for the person's immediate departure from

Canada by another mode of transportation. You should notify the master of his or her obligation to detain a person on board, using an Order to Detain on Board form (IMM 5250).

An SIO may require persons to whom he or she has granted discretionary entry to have their departure on the vessel verified by an IO.

If an inadmissible person must be detained for inquiry, arrange to have the person removed from the ship and detained at a designated immigration detention centre.

3.9 Endorsing the crew list

Until an IO or Customs officer has endorsed the crew list, none of the persons named on the list may disembark.

When the officer has determined all persons named on the crew list to be admissible, or has deleted the names of those persons not admissible as crew members, he or she should endorse the last page of each copy of the document with a port stamp impression.

The modified version of form IMM 200 has boxes for port stamp endorsements printed on the reverse. Fold each page up from the bottom, making the inbound stamp impression on the lower left corner of the reverse side. For the sake of uniformity, the officer should make port stamp impressions on the reverse of other versions of the form as well, unless the list was received by facsimile and the endorsed copy will be returned by facsimile. Unless transmitted by facsimile, reserve the lower right corner on the reverse of the two copies for the outbound stamp impression. Then detach and retain the original at the port-of-entry Immigration office. Place port stamp impressions on facsimile copies on the lower left or right face of the document, as applicable, and superimposed over printed information, if necessary.

The master or agent must retain the endorsed copies, and use them to record any crew changes that occur while the ship is in Canada. These are the copies that the master or agent must provide to an IO before the ship departs from its final port of call, under s. 53(2) of the *Immigration Regulations*.

3.10 Recording crew changes

Under s. 53(2) of the *Immigration Regulations*, the master must ensure that all crew changes are recorded on the endorsed copies presented before the ship's departure from its final port of call. The changes need not be recorded personally by the master. You may amend the list on the basis of information supplied by the master, in the following format:

- deletions: disregard the perpendicular lines of the columns when you are recording deletions. Immediately below the last entry on the endorsed copies of the crew list, identify each person named on the list who has ceased to be employed aboard the vessel, using the corresponding number from the first column. It is unnecessary to rewrite the names and other particulars of the persons concerned. Following the number, add the reason for the change, the date the change occurred (that is, the date on which the person ceased to perform the duties of a crew member), and your initials. For example:

7, 8, 9, 11	discharged	date	initials
6, 10	deserted	date	initials
5	hospitalized	date	initials

3.11 Filing crew lists

- additions: immediately below the last entry on the endorsed copies, use the columns to record the name and particulars of each person who joins the vessel as a crew member after its arrival in Canada. The numbers assigned to crew members joining the ship after its arrival in Canada must not begin again at "1". They must continue in numerical sequence. For example, if the inbound crew list contained 20 names, assign the number "21" to the first crew member to join the vessel in Canada. Write your initials at the end of each addition.

You must ensure that all crew lists endorsed by Customs are promptly forwarded to the port-of-entry Immigration office. Because crew lists contain personal information, the Immigration office must keep the lists on file for at least two years under s. 4 of the *Privacy Regulations*.

4. CREW MEMBERS ON SHIPS OF CANADIAN REGISTRY

Crew members aboard ships of Canadian registry are not required to appear for examination before an IO at a maritime POE, provided that they are Canadian citizens or permanent residents of Canada [*Immigration Regulations*, s. 53(4)].

Under s. 53(4) of the *Immigration Regulations*, the master must notify an IO of the arrival of crew members who are not Canadian citizens or permanent residents. You should examine such persons under A12(1). They require employment authorizations and EIC validations. Because Seafarers' Union regulations limit the use of foreign workers aboard Canadian ships, these cases will be infrequent.

Under the *Immigration Regulations*, masters of Canadian-registered ships no longer need to provide crew lists at the beginning and end of calendar years. The Customs crew-effects declaration and the ship's articles are alternative sources of information, if required. Subsection 53(3) of the *Immigration Regulations* still gives you the authority to request a crew list from a Canadian-registered ship, in case unforeseen circumstances arise in which such a list might serve an immigration purpose.

If a Canadian-registered ship is converted to foreign registry while in Canada, a crew list is not required. Copies of a crew list are required only when a crew list was submitted on the arrival of the ship [*Immigration Regulations*, s. 53(2)].

5. PASSENGERS ARRIVING AT MARITIME POES

All shipboard passengers must appear before an IO at a POE [A12(1)]. The alternative reporting procedures noted in section 3. above do not apply to ship's passengers. All persons arriving aboard a ship who are not crew members as defined under the Act are assumed to be passengers.

5.1 Requirement to appear for examination

All passengers seeking entry must appear in person before an IO [A12(1)]. In most cases, however, examinations by Customs at the primary level will suffice. See section 5.3 below for the categories of passengers whom Customs must automatically refer for secondary examination. The examination of passengers requiring passports or visas for admission to Canada *must* include the scrutiny of those documents, but need not include questioning. Customs or an IO should make port stamp impressions in the passports of those passengers who are admitted.

Although presentation of a passenger list is not a regulatory requirement and does not absolve a maritime transportation company of its duty under A89(1) to present each passenger to you for examination, you may request cruise-ship lines to provide passenger manifests. When a company's official provides such a list to Customs, you may at your discretion excuse the transportation company from its obligation to present each and every passenger. To expedite the admission of large numbers of passengers you may, for example, grant entry to Canadian citizens or returning residents and citizens or residents of the U.S. on the basis of information you find on the passenger manifest. You should ensure that all passengers requiring visitor visas appear personally for examination by Customs.

5.2 Place of examination

For the purposes of A89(1), a marine transportation company should normally present passengers for examination on the ship itself. The master must provide shipboard facilities for this purpose, and must not allow passengers to disembark until you have examined them or given permission for them to disembark. Examples of circumstances under which you may allow passengers to disembark before examination include:

- when facilities for examination are available at dockside
- when a medical or other emergency is reported, and
- when neither Customs nor immigration is physically present at the port and the distance involved makes travel to the ship unfeasible.

When passengers are permitted to disembark before examination, you must inform the company of the place at which it is to present passengers for examination.

A marine transportation company that allows a passenger to elude examination may be prosecuted for the commission of an offence under A97.1(1). The company is also liable for the payment of an administration fee if you report the passenger under A27(2)(f). In such a case complete a Recommendation for Administration Fee form (IMM 5161) and forward it to Port of Entry Control at National Headquarters (see section 7.2 below).

5.3 Referring passengers for secondary immigration examinations

Customs inspectors must automatically refer some passengers for immigration secondary examination, including:

- undocumented or improperly documented passengers
- passengers presenting travel documents suspected of being altered or fraudulent
- passengers who cannot be questioned without an interpreter, other than passengers accompanying a crew member on whom they are dependent, and
- stowaways.

6. STOWAWAYS

6.1 Requirement to notify when stowaways are on board

A marine transportation company must notify an IO at the vessel's first Canadian port of call of the presence aboard of any stowaways as soon as the vessel enters Canadian territory [*Immigration Regulations*, s. 52(a)]. The notice need not be in writing unless you have reason to request a written report. Notice is not required if the vessel is in transit through Canadian waters and will not be docking at a Canadian port.

6.2 Requirement to hold stowaways on board

The master must hold a stowaway in custody aboard the ship until that person is presented to an IO for examination [*Immigration Regulations*, s. 52(b)] at a designated POE. You do not need to provide the master with verbal or written notice of this obligation. If the ship is in transit through the St. Lawrence River or Seaway, the master's duty to hold that stowaway in custody continues until the stowaway is brought to a Canadian POE for examination or, in the case of a stowaway not seeking admission, until the ship has left Canada. If the master wishes a stowaway to be removed from the ship in Canada, he or she must bring the ship to a designated POE and remain there until your examination is completed. You must not allow a stowaway to be removed by launch from a ship that is in transit through the St. Lawrence River or Seaway, because you may subsequently determine that the detention of the stowaway aboard the vessel should have been continued under A90(2). If a stowaway aboard a ship that has arrived at a POE is not seeking admission, or you have not granted the stowaway entry and you allow him or her to leave Canada forthwith, issue the master an Order to Detain on Board (form IMM 5250) under A90(2). You are not obliged to examine a stowaway aboard a vessel that is at anchor and accessible to you only by launch.

A company that allows a stowaway to disembark at a place other than a designated POE, such as a seaway lock, faces prosecution under A97.1(1) and the usual financial liabilities (administration fees and removal costs.)

6.3 Boarding vessels carrying stowaways

When you are notified of the presence of a stowaway aboard a vessel arriving at your POE, you should arrange to have the vessel boarded by an IO as soon as possible after it has docked to reduce the risk that the stowaway will escape from the master's custody and thereby elude examination. If the vessel cannot be boarded upon arrival, advise the agent of the master's obligation to hold the stowaway in custody until the stowaway is presented to an IO, or until the vessel has left Canadian waters if the stowaway is not seeking admission.

6.4 When to allow for repatriation by air

A shipping company may request permission to repatriate a stowaway by air as an alternative to detaining the stowaway on board, particularly if the ship is not scheduled to return to the stowaway's country of embarkation or citizenship. You may grant permission to do so *only* if the following three conditions apply:

- the stowaway is in possession of a valid passport, or if not, a representative of the stowaway's government in Canada issues a travel document valid for a return trip to that stowaway's country of citizenship or last permanent residence, *and*
- the shipping company has obtained a confirmed seat reservation for the stowaway on the next available flight to the country of repatriation, *and*
- you are satisfied that the stowaway will not attempt to remain in Canada illegally if you allow him or her to disembark.

If you grant permission, the stowaway may be allowed to leave Canada forthwith under A20(1)(b) or A23(4.2)(b). In such cases the stowaway must be escorted to the airport and his or her departure must be confirmed by an IO.

6.5 Use of AOC code for stowaways

The use of AOC code 421 on all reports under A20 differentiates persons who arrived in Canada as stowaways from other immigration clients. You must use the code, therefore, to permit the extraction from FOSS of accurate data.

7. VIOLATIONS OF A89.1 BY A MARINE TRANSPORTATION COMPANY

The conveyance to Canada of each undocumented or improperly documented stowaway or other passenger, whether or not the person is seeking admission, constitutes a violation by the marine transportation company of A89.1. A marine transportation company must screen the documents of all passengers to whom it knowingly grants passage on the vessel and take whatever precautions are necessary to prevent the conveyance of stowaway passengers.

7.1 Determining if administration fees may be imposed for violations of A89.1

When a marine transportation company contravenes A89.1 by carrying improperly documented passengers, including stowaway passengers, you must determine whether or not to complete a Recommendation for Administration Fee form (IMM 5161). If administration fees may be assessed, you must send notification to National Headquarters by using the form, unless the fees apply to a crew member who has deserted (see section 9.5 below). Fees may be assessed for the following classes of persons, as outlined in s. 42.2(1) of the *Immigration Regulations*:

- persons who fail to be in possession of required travel documents
- persons whom the Minister had instructed the transportation company not to carry
- persons who are exempt from passport or other travel document requirements but who fail to produce documentary evidence under s. 14(6) of the *Immigration Regulations*
- persons who have eluded examination, and
- persons who remain in Canada after they have ceased to be visitors.

Fees may not be assessed for the classes of persons described in s. 42.2(2) of the *Immigration Regulations*, as follows:

- persons granted discretionary entry under A19(3) or A23(2) or allowed to come into Canada under A22
- persons issued a Minister's permit before the opening of an inquiry
- persons allowed to leave Canada forthwith under A20(1)(b), A23(4), or A23(4.2)(b) and who leave Canada, and
- persons who are the subject of an exclusion order made by a SIO under A23(4) and who leave Canada.

7.2 Action required when administration fees apply

If you determine that a marine transportation company is liable to pay administration fees:

- a) issue a direction to the marine transportation company — usually the ship's agent — for a cash security deposit to cover the fees and potential costs related to removal, provided that the company has not deposited general security. In the absence of instructions to the contrary, the amount of the deposit should be \$7,000 in all cases

- b) if the company refuses to comply with the direction to deposit security, please refer to section 9.6 below
- c) when you receive the security, issue an official receipt (form IMM 410; see APPENDIX C of chapter PE 13) to the agent
- d) record the receipt of security on FOSS by adding remarks to the NCB screen
- e) immediately record the official receipt number and the amount of the deposit on a Record of Transportation Company Liability form (IMM 459; see APPENDIX A of chapter PE 14), and
- f) complete a Recommendation for Administration Fee form (IMM 5161). You may use the version of the form generated by the ALFS, if available. If you received a security deposit, give the serial number of the official receipt in section 17 of the IMM 5161. If the person concerned was a stowaway, delete the word "last" in *Last port of embarkation* in section 12, and give the name of the port at which the stowaway boarded the vessel instead of the name of the ship's last foreign port of call. Send the completed form to Port of Entry Control at National Headquarters within 48 hours of the passenger's arrival, if possible. For instructions on completing an IMM 5161 form, see APPENDIX C of chapter PE 14.

For information on collecting security deposits for crew members who have deserted, see section 9.5 below.

When you transfer the file from your POE to an inland Immigration office for inquiry, ensure that the IMM 459 is conspicuous by placing it on top of the file.

7.3 Using the IMM 459 form to authorize refunds or deductions from cash security deposits

When you receive cash security under A92(2), you must use the IMM 459 form to record the amount collected. The IMM 459 form is also used to keep an accurate record of transportation company liabilities. Liabilities include removal or medical expenses paid by the department which must be deducted from the security deposit. Removal expenses include the cost of obtaining transportation, accommodation and documents for the person removed as well as for any escorts. Carriers are also liable for the costs incurred in detaining any person who they conveyed to Canada prior to February 1, 1993, including any detention costs incurred after that date (see section 2.6 of PE 14). If no unpaid expenses are outstanding after a client has been removed or granted landing, record "nil" under *Expenses*, so that the entire amount of cash security, less any administration fees, may be refunded.

Once a client for whom a cash security deposit is held has been landed or removed, the responsible Immigration office must send the IMM 459 to the Director, Accounting Operations, Citizenship and Immigration Canada (CIC), Ottawa/Hull, K1A 1L1, regardless of whether any expenses have been recorded on the form. The responsible Immigration office is the Immigration office that granted landing or arranged for the removal of the person concerned through a Central Removal Unit. Unless National Headquarters receives a completed IMM 459, no part of the security deposit can be refunded or used to recover expenditures for which the depositor is liable.

8. EXAMINATIONS AT AIRPORTS AND LAND BORDERS OF PERSONS SEEKING ADMISSION TO JOIN SHIPS AS CREW MEMBERS

When persons arrive at airports or land borders to seek admission to join ships as crew members, Customs will refer them to Immigration offices for immigration secondary examinations.

Do not automatically issue a visitor record to a seaman admitted to become a crew member (see section 8.5 below). Most persons seeking entry to join ships as crew members are legitimate seamen, and you should facilitate their entry. Your control efforts should focus on identifying the small percentage of those whom you should refuse under A20 or to whom you should grant admission only on the deposit of cash security or the posting of a performance bond under A18. As an additional control measure you should always send the names of any persons admitted to become crew members and the names and locations of the ships to the Immigration office responsible for that maritime POE.

8.1 General presumption

You must not overlook the general presumption described in A8 when you examine a person seeking admission to join a ship as a crew member, particularly because the person is not pre-screened by a visa officer before arrival. The burden of proving admissibility rests with the person purporting to be a seaman. Until you are satisfied that the person is a bona fide seaman who intends to join a ship, you must presume that the person's intentions are those of an immigrant. A person who would otherwise require a visa for travel to Canada has more reason to masquerade as a seaman.

8.2 Ship-joining letters

Most seamen travel to Canada with letters issued by their employers containing ship-joining instructions. Airlines sometimes request a ship-joining letter as evidence that they can carry a passenger to Canada without a visa. You can expect the letter to contain:

- the name, address and telephone number of the marine transportation company on a printed letterhead
- the passenger's name, date of birth, and citizenship
- the number of the seaman's book or passport of the passenger
- the name and location in Canada of the ship that the passenger has been recruited to join, and
- the name, address and telephone number of the shipowner's authorized agent in Canada.

Although the letter can substantiate a person's statement of purpose in seeking admission, you should verify the information it contains if you have reason to suspect the intentions of the holder. You should obtain from the agent named in the letter confirmation:

- that the vessel is in or destined to Canada
- that the person has been recruited to join the vessel
- that the ship, if of foreign registry, is not engaged in the coasting trade, and
- that the duties which the person intends to perform are those of a member of a crew as defined in the Act.

8.3 Retaining ship-joining instructions

Ship-joining letters are very easily fabricated by smugglers as a way of convincing airlines to convey persons without visitor visas. Local shipping agents might even be named in fictitious instructions as a means of making the letter appear legitimate.

You should retain the ship-joining instructions and the written notice from the shipping agent, with the date and time of the person's admission written on them, at the POE where entry was granted. They should be kept on file for at least six months in case they are needed as evidence of liability under A86. In such a case the marine transportation company, not the airline that conveyed the passenger, is liable for removal costs, medical costs under A92(4) and administration fees under A91.1(1).

8.4 Using port stamps

When you admit a seaman who is travelling with a passport, make a port stamp impression in the passport. Write the code letter *C* below the impression, denoting that the document holder must join a vehicle as a crew member within 48 hours after admission if no expiry date is specified, or by midnight of the expiry date that you write after the code letter.

If the seaman is not in possession of a passport, do not use this procedure, given that seamen's identity documents are not designed to accommodate port stamp impressions. For further information on using port stamps, see chapter IC 3.24.

8.5 Visitor records

The lack of a passport in which to make a port stamp impression does not, in itself, warrant your issuing a visitor record on form IMM 1442 generated by the Field Operations Support System (FOSS) or on a Visitor Record form (IMM 1097). You should not issue visitor records routinely. Issue a visitor record to a seaman only when you wish to have an IO at the maritime POE verify that the seaman has complied with terms and conditions by joining the ship. Verification will always be necessary when you have received a visitor's security deposit under A18(1). Issuing a visitor record may be warranted in other cases if it is used in conjunction with verification of compliance. You should not issue a visitor record because you have doubts about the person's intention to become a crew member. Issuing a report under A20 or making a departure order would be more appropriate in such a case.

9. DESERTERS

If you have reason to believe that a person admitted as a crew member or to become a crew member has deserted, you have the authority to begin enforcement action immediately. Do not wait until the ship has left the port at which the desertion occurred, or for notification from the master. You should also consider as a deserter any person brought to Canada to join a ship as a crew member who fails to join the ship after having been admitted at an airport or a land border POE.

9.1 Notification of desertion

The master must give notification of a desertion without delay, including the failure of a seaman to report for duty as a crew member. The master must not wait until the ship is about to sail to report the desertion. When you receive notification, ask the master to provide the information necessary for you to complete a written report on a Notice of Desertion form (IMM 202). Have the master or the authorized agent sign the completed form.

9.2 Grounds for enforcement action

A person admitted as a crew member ceases to be a visitor as soon as that person ceases to be a member of the crew [A26(1)(c.1)]. Likewise, a person granted entry to become a member of the crew ceases to be a visitor if that person fails to become a member of the crew within 48 hours after admission, or within the period of time otherwise specified. Under s. 12.1 of the *Immigration Regulations*, a person who has deserted or a person whom an IO believes on reasonable grounds has deserted is a person who is no longer a member of a crew. Because the deserter has ceased to be a visitor, enforcement action is necessary.

9.3 Enforcement procedures

When you receive notification of a desertion from the master or an authorized agent, or when you have other reasonable grounds to believe that a crew member has deserted, you should:

- a) consult the ship's inbound crew list to verify whether or not the person's name has been recorded. If the notification concerns a person who failed to report for duty as a crew member after having been brought to Canada for that purpose, determine when and where the person concerned was admitted and record this information on a Notice of Desertion form (IMM 202).
- b) complete the Notice of Desertion form (IMM 202) without delay. Do not retain the form because you are awaiting a security deposit and cannot include the official receipt number. You may transmit this or other missing information later. Send one copy to Port of Entry Control at National Headquarters within 48 hours, if possible. Headquarters needs the notice to assess administration fees against the marine transportation company and to compile statistical data. Keep the original on the case file. Administration fees apply in each case of desertion [*Immigration Regulations*, s. 42.2(1)(e)]. Do not complete a Recommendation for Administration Fee form (IMM 5161) in these cases.
- c) ask the master to surrender any identity documents belonging to the former crew member, and any information that may be helpful in locating the deserter. Forward any documents that you suspect are

9.4 Procedures when a deserter reports to an inland Immigration office or comes to the attention of an investigator

fraudulent to the nearest detachment of the RCMP for analysis by the RCMP's Immigration and Passport Branch. Keep the others on the case file until the deserter is located. If the master refuses to surrender the deserter's passport or seaman's book, ask the master to provide a photocopy of the page identifying the holder.

- d) if the master wishes to have any luggage belonging to the deserter removed from the ship, advise Customs. Once Customs has inspected the luggage, the agent should retain it until contact is made with the deserter.
- e) inspect the deserter's cabin and remaining luggage, if possible. Your inspection may result in the discovery of additional identity documents or of information that could lead to the apprehension of the deserter.
- f) initiate enforcement action by reporting the deserter under A27(2)(e) and A26.1(c.1), either on FOSS-generated form IMM 1442, or manually on a Report under Section 27 of the Immigration Act form (IMM 1241) followed by a status entry in FOSS. So that statistical data on deserters can be extracted from FOSS, enter the correct code in the *Cause* field. The allegations in the body of the report should incorporate the elements contained in the following example:

Name of deserter is a person who was granted entry to Canada on *date* at *name of port* as a member of the crew of the *name of vessel*. On or about *date of desertion*, in *name of place*, the said *name of deserter* deserted the vessel, thereby ceasing to be a visitor pursuant to A26(1)(c.1).

You must use the FOSS status—entry *Remarks* screen to summarize this information. For example:

deserter from *name of vessel* at *name of place* on *date*.

A seaman admitted to become a crew member who absconds before doing so is reportable under A27(2)(e) and A26(1)(c.1) as soon as the period of time granted by an IO in which the seaman must join the ship has expired.

- obtain three copies of a Direction For Inquiry (form IMM 1234) signed by your Immigration office manager.
- if the deserter's whereabouts remain unknown after a reasonable delay, obtain a Warrant For Arrest (form IMM 420), signed by an SIO. Send a copy of the warrant to the Immigration and Passport Branch of the RCMP for entry into the Canadian Police Information Centre (CPIC).

If you are a counsellor or an investigator at an inland Immigration office and you encounter a client who claims to be a ship deserter, you must:

- a) query FOSS to determine if the person concerned has been the subject of a report under A27(2)(e) and A26(1)(c.1).
- b) if you do not find a record, ask the client at which port the desertion occurred. Contact the Immigration office responsible for that port to determine if there is any record of the client having been admitted as a member of a crew. If so, determine whether or not a warrant for arrest has been issued.
- c) if the port—of—entry Immigration office has no record of the client's admission as a crew member, query CPIC to determine if there is an outstanding warrant for arrest.

- d) execute an outstanding warrant by issuing a written Notice of Arrest on generic form IMM 1442 using FOSS, or on a Notice of Arrest form (IMM 1285). When you execute the warrant, inform the deserter of the reason for the arrest and of his or her applicable rights, using a Notice of Rights Conferred by the Vienna Convention and the Right to Be Represented by Counsel at an Immigration Inquiry form (IMM 689).
You must arrest a deserter for whom there is an outstanding warrant, whether or not the deserter has voluntarily walked into an inland Immigration office seeking assistance. Even if you intend to release the person immediately after the arrest, execution of the warrant ensures that the release can be subject to terms and conditions, including the payment of a security deposit or the posting of a performance bond.
- e) after executing the warrant, you may release the person concerned under terms and conditions if you are satisfied that he or she will appear and does not pose a danger to the public.
- f) as soon as you have executed a warrant, advise the issuing Immigration office to have the warrant removed from CPIC without delay.
- g) if a warrant for arrest has not been issued and the responsible Immigration office has confirmed that the person concerned is a deserter, you must arrest the deserter without warrant under A103(2) if you believe that he or she may not appear for inquiry or poses a danger to the public. In any case, you must wait for the port-of-entry Immigration office to follow the procedures described in section 8.4 above, and for the port-of-entry Immigration office to transfer the file to you. The file must include a copy of the IMM 202, the completed report under A27(2)(e) and A26(1)(c.1), signed directions for inquiry, and any identity documents retrieved from the ship. The report under A27(2)(e) and A26(1)(c.1) should not be made by you, but by an IO at the Immigration office where the crew list is filed.
- h) take the photograph and fingerprints of all walk-in clients who are arrested or who claim to be Convention refugees [A110(2)(a)].

9.5 Collecting security deposits for payment of administration fees and other expenses

When a crew member deserts, issue a direction to the marine transportation company — usually the ship's agent — for the deposit of security, provided that the company has not deposited general security. Consult Port of Entry Control at National Headquarters if you are unsure whether or not security is required. Then follow the procedures in sections 7.2 and 7.3 above for collecting and recording security deposits, if applicable.

9.6 Detaining or seizing ships when marine transportation companies fail to deposit security

When a marine transportation company, including its agent, fails to comply with a direction to deposit security under A92(2), you should advise the company that failure to comply may result in the detention or seizure of a ship. If the lack of compliance continues, see chapter PE 13, *Holding, Detaining, and Seizing Vehicles Operated by Transportation Companies*. In consultation with your manager, you should use the guidelines in chapter PE 13 to decide whether to detain the vessel for 48 hours or to recommend

its seizure. The agent representing the shipowner or operator may be able to assist in making this determination. Detaining the ship may be in the best interests of the agent because costs related to immigration enforcement action against stowaways or deserters are liabilities of the agent. In many cases, detention of the ship would persuade the shipowner to provide the agent with the funds necessary to cover these liabilities. Under Instrument I-48, the authority to detain a ship under A92(4) has been delegated to Regional Directors of Immigration, Regional Area Managers and Regional Managers, Port of Entry Operations. The seizure of a ship requires the approval of the Director General, Enforcement Branch, National Headquarters.

9.7 Using the IMM 459 form

For detailed instructions on using the IMM 459 form, see section 7.3 above. Use the form to record the amount of cash security deposited and all expenses incurred by the department that must be reimbursed by the carrier. Once the deserter's application for refugee determination or landing in Canada has been dispensed with, the responsible Immigration office must expedite the form to the Director, Accounting Operations, CIC, K1A 1L1, for a refund or deduction from the applicable security deposit to be made.

9.8 Expenses not to be recorded on an IMM 459

You should not record on form IMM 459 any removal or medical costs incurred by the shipping agency directly. You should always instruct medical doctors and hospitals or other medical institutions to bill carriers directly for any costs related to the medical treatment of crew members or deserters.

Do not record detention costs on the form if they pertain to persons brought to Canada by the carrier on or after February 1, 1993.

10. CREW MEMBERS OTHER THAN DESERTERS WHO CEASE TO PERFORM THEIR DUTIES

Members of a crew who fail to leave Canada within 72 hours after becoming unwilling or unable to perform the duties of a member of a crew are no longer members of a crew [*Immigration Regulations*, s. 12.1(1)(d)]. In such cases follow the same procedures for taking enforcement action as apply in cases of desertion (see section 9. above). Specify the circumstances under which you revoked visitor status when entering reports under A27 into FOSS, using the *Remarks* screen.

The following circumstances may lead to the loss of visitor status for crew members:

- a labour dispute aboard a ship
- the seizure of a ship by court order or other authority, and
- suspension of a ship's operations due to an accident or mechanical problems.

These circumstances will not automatically result in the loss of visitor status. Until you report a crew member under A27(2)(e) and A26(1)(c.1) in one of these circumstances, the visitor status of that person must be assumed not to have been revoked. In determining whether or not enforcement action is appropriate, you must assess whether or not the unwillingness or inability to perform duties will continue after the problem has been resolved. If no resolution is in sight, or if you have reason to believe that the crew member will not resume duties, start enforcement action as soon as possible after the 72-hour period expires.

Administration fees apply as soon as you have reported the crew member under A27(2)(e) and A26(1)(c.1). Complete the applicable parts of the Notice of Desertion form (IMM 202) and forward it to Port of Entry Control at National Headquarters without delay. You do not need to obtain the signature of the master or agent. Do not complete parts A or B of the form, which apply only to crew members who have deserted. If you are using an earlier version of the form, use the space reserved for remarks to indicate why the crew member has ceased to be a visitor. If you are using a modified version, enter this information in the space reserved for the signature of the IO.

11. HOSPITALIZED CREW MEMBERS

Although s. 54(1)(b) of the *Immigration Regulations* requires that a ship's master notify an IO when any crew member is hospitalized, the master need report only hospitalizations that will continue after the ship's departure. Under s. 12.1(1)(c) of the *Immigration Regulations* crew members who are hospitalized retain their visitor status automatically until 72 hours after their release from hospital, or until the expiry of any longer period of time granted on an application for extension under A16(b).

12. DISCHARGED CREW MEMBERS

Under s. 54(1)(b) of the *Immigration Regulations*, the master must immediately notify an IO when a crew member who is neither a Canadian citizen nor a permanent resident is discharged, even though the discharge of a foreign crew member does not require the approval of an IO. Once discharged, a foreign crew member automatically retains his or her visitor status for a full 72 hours. You may shorten or lengthen this period where warranted. In such a case, stamp the passport carried by the discharged crew member, and write the code letter *V* followed by the expiry date below the port stamp impression. No such notation is possible if the discharged crew member is not in possession of a passport. When notification is received, record the discharge as an *NCB* entry in FOSS.

The 72-hour period does not apply to Canadian citizens, persons admitted as returning residents, and crew members with employment authorizations. It applies only to crew members admitted as visitors without employment authorizations. Holders of employment authorizations, whether discharged or not, must leave Canada on or before the expiry date indicated on the employment authorization.

13. OFFENCES BY A MARINE TRANSPORTATION COMPANY

If you believe that a marine transportation company has contravened any section of the Act or its regulations other than A89.1, you should report details of the offence on a Notification of Contravention of the *Immigration Act* or Regulations by a Transportation Company form (IMM 5248; see APPENDIX F of chapter PE 14). Deliver the original to a representative of the transportation company, and forward copies to the local detachment of the RCMP and to the Manager, Transportation Division, Port of Entry Control, National Headquarters. The RCMP detachment will determine whether charges under the Act or its regulations are warranted, and will transmit pertinent information to the RCMP's Immigration and Passport Branch. The RCMP maintains an historical record of all infractions, whether or not charges are laid. For further information on the obligations and liabilities of transportation companies, see chapter PE 14.

IMMIGRATION

Canada

Chapter PE 12

**Search, Seizure,
Fingerprinting and
Photographing**



University of
 Toronto

St. Michael's
 Hospital

Department of
 Medicine

Internal Medicine
 (General Medicine)

Residency Program

September 1999





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Search, Seizure, Fingerprinting and Photographing

Abbreviations and Short Forms	
Act	<i>Immigration Act</i> , as amended
CIC	Canada Immigration Centre
Customs	Revenue Canada, Customs, Excise and Taxation
FOSS	Field Operations Support System
IO	Immigration Officer
SIO	Senior Immigration Officer

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how an immigration officer at a port of entry seizes documents and vehicles, conducts searches, and takes fingerprints and photographs of persons seeking to come into Canada.

1.2 Policy intent

Canadian immigration policy aims for search, seizure, fingerprinting and photographing are:

- to maintain and protect the health, safety and good order of Canadian society, and
- to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity [A3].

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, section 3.

2. SEARCHES

2.1 Canadian Charter of Rights and Freedoms notices

As an immigration officer (IO) working at a port of entry (POE), you have the power under the Act to search persons seeking to come into Canada whom you believe on reasonable grounds to be concealing their identities, or concealing documents or other pertinent information relevant to their admission [A110(2)(a)].

Under A110.1(1) you require the authority of a senior immigration officer (SIO) to conduct a personal search. You do not need this authority to search a person's luggage or personal effects, nor the vehicle that conveyed that person to Canada. It is departmental policy that you keep a written record of each search that you conduct. Complete the appropriate section of the Personal Search form (IMM 5242; see APPENDIX A) in all cases. For information on completing an IMM 5242, see section 3.6 below.

The *Canadian Charter of Rights and Freedoms* protects the basic rights of all persons in Canada, including visitors, regardless of the length of their stay. Sections 8 to 10 of the *Charter* provide that:

8. Everyone has the right to be secure against unreasonable search or seizure.
9. Everyone has the right not to be arbitrarily detained or imprisoned.
10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed of that right; and
 - (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

When you detain a person for the purposes of a personal search, you *must* read the following two notices [*Canadian Charter of Rights and Freedoms*, ss. 10(a), 10(b)]:

I have reasonable grounds to believe that you are carrying documents on or about your person and I am detaining you for the purposes of a personal search as authorized by sections 110(2)(a.1) and 110(2)(a.2) of the *Immigration Act*. Do you understand?

It is my duty to inform you that you have the right to retain and instruct counsel without delay. If you cannot afford counsel you may have access to legal aid counsel. In any event, you have the right to immediate advice from legal aid duty counsel. Do you understand?

A complete search of a person's baggage, as exhaustive as it may be, is not considered to be a detention.

A full body search of a person (that is, disrobement) is considered to be a detention. A disrobement will rarely be required.

You should always note all details of the interview that led to the search, and what you found during the search. You may be called on to testify as to the reasonable and probable grounds for the search if the search is challenged in the courts.

2.2 Reasonable grounds

Before you conduct a search, you must have reasonable and probable grounds to believe that the person:

- has not revealed his or her identity
- has hidden documents relevant to his or her admissibility, or
- has concealed documents used for the purpose of smuggling people into Canada.

This requires something more substantive than your intuition or mere suspicion.

Reasonable grounds are grounds that, due to probable elements, facts, circumstances or pieces of information that are or may be available, would lead an informed and experienced officer to believe that a violation of the *Immigration Act* or its regulations may have occurred or may occur.

For example, you may believe that a refugee claimant had a travel document when the person boarded the aircraft, but when you examined the person he or she had no identification. This circumstance may constitute reasonable grounds to do a baggage search and a personal search.

As another example, a visitor has given consistent answers to your questions, yet you suspect the person may be coming to Canada to work. In this instance, mere suspicion by itself does not constitute reasonable grounds.

Remember that the Act does not convey the authority to search for goods that may affect your decision to admit. For example, if you believe that the person you are examining may be carrying a firearm that is prohibited in Canada, the Act does not give you the authority to search a conveyance for this purpose. If you find goods such as drugs or a weapon when you are searching for documents, you should immediately contact a Customs officer.

In the examination process, the immigration examination takes precedence. For example, an IO at the Primary Inspection Line should never refer a person to a Customs secondary examination for a search before an immigration secondary examination is completed.

2.3 Types of searches

2.3.1. Preliminary searches

A preliminary search involves the examination of all carry-on baggage that is with the person in the examination area, including purses, brief cases, and carry-on bags. As the examining officer you conduct this type of search.

2.3.2. Full examinations

A full examination is an examination of all baggage, personal effects and conveyances for the purpose of discovering papers or documents that may relate to the immigration examination being conducted. Customs officials will conduct this search on your behalf, and you observe the process.

2.3.3. Personal searches

With the written approval of an SIO, you may conduct two kinds of personal searches:

- **frisk:** often called a "patdown", the frisk is a personal search that involves physical contact with the person. To detect concealed documents, you either pat the person's clothing or run your hands

along the clothing. A Customs officer should be present when you conduct a frisk search. As a result of the frisk search it may be necessary to have the person disrobe so that you can search for or remove evidence. (A Customs officer may ask you why you have not advised the person of his or her rights. Customs officers rarely conduct a frisk search without doing a disrobement; thus they notify the person of his or her rights before conducting the search. IOs will rarely do a disrobement, and consequently do not have to inform the person of his or her rights. *If a person objects to being frisk-searched, you must decide whether to continue against the wishes of the person. If you decide to continue, you should consider the person detained and advise him or her of the right to retain counsel.*)

- **disrobement:** a disrobement search involves the full or partial disrobement of the person to detect or obtain documents that the person has concealed on his or her person. *Disrobement is detention, and you must advise the person of his or her rights under the Charter. A Customs officer conducts a disrobement search in your presence. No person is to be personally searched by a person who is not of the same sex [A110.1(3)].*

3. SEARCH PROCEDURES

3.1 General rules

Your personal safety is of utmost importance, and you should exercise caution at all times when conducting a search by observing the following general rules:

- a) once you have decided to search the person or the person's personal effects, you should never leave the person alone until you have completed the process.
- b) you should have the traveller identify his or her goods or baggage and confirm ownership. This will enable you to establish possession, should you find documents.
- c) you should search an individual's personal effects in a closed office or out of sight of other passengers (for example, in a Customs secondary search facility), but in the presence of the individual.
- d) you must respect the dignity and integrity of the person concerned throughout the conduct of a search. Refrain from making unnecessary remarks and attempting to be humorous.
- e) you must complete a Personal Search form (IMM 5242) in all cases. If you do not create a file on the person, the IMM 5242 should be retained locally for one year.
- f) you should record any information relevant to conducting the search either in your official notebook (form IMM 5014) or on the client's file. Relevant information includes anything out of the ordinary that happens, such as comments made by the client. For further information on using your official notebook, see APPENDIX B.
- g) occasionally a person may react to a search by directing a series of profane comments to officers present. You should maintain a professional demeanour and carry on with the search. The person's use of profane or abusive language is not grounds for arrest. For the rules governing obstruction, see s. 129 of the *Criminal Code*.
- h) if the person asks any questions during the search, you should answer them politely but without elaboration, especially if an argument is likely to develop as a result.
- i) the search room should always be free of foreign objects that may be used as weapons.

3.2 Preliminary searches

As with any search, the preliminary search requires you to have reasonable grounds to conduct the search. You do not require an SIO's approval to conduct this search.

The only exception to this rule is the preliminary search of a minor child, which does require an SIO's consent. The parent or adult accompanying the child must be present during the search. When you are dealing with a minor child, you must demonstrate all the sensitivity required to avoid traumatizing the child in any way. If the child is travelling alone, you must ensure that a reliable witness is present throughout the entire duration of the search.

A preliminary search begins with a search of the individual's personal effects in his or her immediate possession, such as a purse, wallet, brief case and carry-on baggage. You may request the individual to empty his or her pockets, and to remove a coat or jacket so that you may examine it. *A preliminary search does not involve physical contact with the individual.*

When conducting a preliminary search, you should remember these points:

- a) approval of the SIO is not required, except for minors
- b) complete part A of the Personal Search form (IMM 5242; see section 3.6 below)
- c) identify the person as the owner of the carry-on bags; you may wish to ask:
 - Is this your bag?
 - Did you pack it yourself?
 - Are you aware of the contents?
- d) explain to the person why you are searching his or her baggage
- e) ask the person for his or her permission to search the bags; even though you have the authority to conduct searches, a search will usually proceed more easily when you obtain the permission of the person
- f) ensure that the surface on which the examination is to take place is clean and dry, so that the passenger's bag, purse, and so forth will not get wet or dirty
- g) ask the person to open his or her briefcase, or to empty the contents of a purse or wallet on the table
- h) check the contents, then check the bag; handle only one bag at a time
- i) examine the outside of the bag, then examine the inside
- j) examine all pockets and check for false panels and bottoms
- k) ask the person to empty his or her pockets, and examine the contents, and
- l) be courteous, discreet and tactful with the person.

3.3 Searching carry-on luggage

It is important to search any piece of carry-on luggage systematically. To search luggage, including briefcases, purses and valet and flight bags, you should:

- a) open the bag and look at the general contents and layout. Remove any loose items that could injure you and set them aside. These items may include razors, pointed scissors, knives or a glass container that may have broken in the bag. Most often the person has not left these items with the intention of causing harm to someone.
- b) inspect the inside edges all around the bag with the palm of your hand. Choose a starting point along the inside edge of the bag. Pull back the clothing or contents near the starting point with one hand. Place your other hand down the side of the bag at the starting point. Press your hand against the inside edge of the bag. Feel the lining for hidden documents or papers. Continue to work your way around the edge of the bag until you return to the starting point. Remember that you cannot see the entire surface you are inspecting, so go slowly and cautiously.

- c) search the contents of the bag, layer by layer. Remove and set aside any items that are in a container you cannot see through, such as a shaving kit. Clothing can be left in the suitcase; for larger suitcases you might want to set them aside on the table or the desk. Follow these steps:
 - lift one edge of the top layer of clothing and place one hand under it palm side up
 - place your other hand on top, palm side down
 - pat and squeeze the layer of clothing between your hands, feeling for objects such as an address book or passport
 - unfold the articles of clothing and check any pockets
 - continue to pat and squeeze across the entire top layer of the bag
 - continue in this fashion for each layer of clothing in the bag, and
 - for rolled-up clothing, simply squeeze slowly, feeling for defined objects; remember that rolled-up clothing may contain sharp objects that could cause injury.
- d) search any pockets or zippered pouches that are inside the top lid of the bag. Proceed slowly, because there may be sharp items inside the pockets
- e) ensure that you have opened and inspected the contents of all containers. Watch for false bottoms.
- f) open all books and check for concealed documents. These may be cut into the cover or cut into the pages of the book.
- g) check the lining in the bottom and top of the suitcase.
- h) should you discover what you suspect to be illegal substances or goods when checking a person's carry-on luggage, contact Customs immediately. Once you have started the search, never leave the person alone.

You will find it easier to search carry-on luggage if you develop a systematic approach.

3.4 Full examinations

It is departmental policy that all searches of baggage or vehicles will be conducted by Customs, in the presence of an immigration official. This policy has been agreed on at the national level, and will protect the person from the possibility of being subjected to two searches. Local offices should work out the procedures with their counterparts in Customs.

For a full examination, you should:

- complete part A of the Personal Search form (IMM 5242; see section 3.6 below)
- explain to the person why his or her baggage or vehicle is being searched
- if the person requests permission to speak to a senior officer, arrange an interview
- arrange with Customs to conduct the search, and
- observe the search and make a note of any articles relating to immigration that are found.

3.5 Personal searches

3.5.1. Frisk searches

You must obtain the authority of an SIO to conduct a search of a person [A110.1(1)]. It is departmental policy that you obtain this authorization in writing before you begin the search. The SIO must sign the Personal Search form (IMM 5242), if the SIO is not immediately available to sign the form, note the details on the IMM 5242, including the telephone number and the time of the telephone call to the SIO. The SIO should sign the form as soon as possible.

You must be a member of the same sex as the person concerned to conduct a frisk search [A110.1(3)]. A Customs officer should be present when you conduct a frisk search.

If you determine before you begin a frisk search that a full disrobement will take place, you must inform the person of his or her rights under the *Charter* (see section 2.1 above).

If a metal-detector wand is available, as a safety precaution you should conduct a frisk for weapons using the wand.

In conducting a frisk search, you should:

- a) explain to the person why you are searching him or her.
- b) explain that an SIO has authorized the search. If the person requests to speak to the SIO, in the interests of administrative fairness you should arrange an interview. A personal interview is not necessary; it may be conducted by telephone. If the person talks to an SIO, note this fact on the IMM 5242.
- c) seek the person's co-operation by asking permission to conduct the search.
- d) before you conduct a frisk search, always ask the person if he or she is concealing anything on his or her person, and if so, to hand over whatever the person may be hiding.
- e) ask the person to remove all objects from his or her coat, jacket, pants or sweater.
- f) check the contents, paying special attention to wallets, envelopes or other packages that could contain documents of any kind.
- g) ask the person to remove any outer garments, such as a coat, jacket or sweater.
- h) check these garments carefully for any unusual bulges inside the lining. If you find a bulge, examine it carefully.
- i) pass your hands over the entire body of the person concerned, on the outside of the clothing, to detect any unusual bulges that would indicate hidden items or documents.
- j) in your notebook (IMM 5014), record all information pertaining to the search. Charges may result and you may be required to testify in court. For further information on using your notebook, see APPENDIX B.
- k) you may ask the individual to empty his or her pockets. If you do, record the contents on the IMM 5242 to protect yourself from being accused of taking personal property. Return the contents to the person immediately after you complete the search, and have the person sign for their return.
- l) before allowing the person to leave the room in which you conducted the search, you should ask the person: *Are you satisfied that you have all of your property?* This will aid in preventing claims of theft. If the

3.5.2. Disrobement

person you searched claims to be missing items, you should review the search form with the person to determine what is missing. Continue this process until the person is satisfied that all his or her possessions have been returned.

A disrobement search should be a very rare occurrence. A Customs officer will conduct the search on your behalf, in your presence. The Customs officer must be of the same sex as the person concerned to conduct a disrobement search, and you as a witness must also be of the same sex [A110.1(3)].

A disrobement search is considered to be a detention. You must inform the person of his or her rights under the *Charter*. You must give the person concerned a reasonable opportunity to exercise those rights. Inform Customs that you advised the person of his or her rights, and give Customs the opportunity to issue a secondary caution.

Immediately after you caution the person, or as a simultaneous action, but before the person enters the search room or has access to a telephone, frisk the person for weapons. This frisk is a safety precaution for the searching officer and all persons in the inspection area. Such a search is solely for the purposes of safety, and not to discover evidence. If one is available, you should use a metal-detector wand.

Once you give the person the opportunity to contact counsel, the search can proceed. Do not delay the search for counsel's arrival.

For a disrobement search, you must:

- a) complete a Personal Search form (IMM 5252), and have an SIO concur with the request
- b) explain the reasons for the search
- c) if the person requests permission to talk to a SIO, arrange an interview
- d) if the person wishes to exercise his or her rights under the *Charter*:
 - arrange for access to a telephone
 - provide the person with a telephone directory
 - advise the person that you are unable to recommend a lawyer, and
 - allow the person to carry on conversation without intrusion; you may observe the person, but not listen to the conversation
- e) seek the co-operation of the person before the search begins
- f) make note of any documents found, and
- g) seize any documents that are described in A110 (see section 4. below).

3.6 Completing the Personal Search form (IMM 5242)

You must complete a Personal Search form (IMM 5242) for all searches.

Complete **part A** of the form in all cases by:

- stating your reasonable grounds for the search, and
- giving the name of the Customs officer assisting you in the *Individuals Involved* section.

Complete **part B** of the form in all instances where you are requesting a body search by:

- stating the reasonable grounds for conducting a body search, which must be more definitive than for the full examination of the person's luggage, and
- including the results of the full examination search.

The SIO indicates his or her concurrence by signing the form as the authorizing officer. If you obtain concurrence over the telephone, note this information on the form. Request that the SIO sign on his or her return to the CIC.

You should list on the reverse of the form any personal effects that you obtain from the individual during a frisk or disrobement. Request the person to sign for their return. Before the person signs for the return of property, you should ask the person: *Are you satisfied that you have all of your property?* If the person is not satisfied, review the contents listed on the form with the person to determine which items are missing. Continue this process until the person is satisfied that he or she has received all of his or her belongings. Then and only then should the person sign the IMM 5242.

3.7 Canadian citizens

Canadian citizens have a right to come into Canada. Once you have established this fact, any delay of the individual would constitute detention. If you have reason to believe that an identified Canadian citizen may be involved in smuggling documents, you must arrange for Customs or the RCMP to conduct a search. Because charges may result, it is best to have the other agencies involved at the outset. POEs should work out procedures for this eventuality, in conjunction with the Regional Intelligence Officer.

Once you make a decision on the person's admissibility, before you question him or her concerning possible charges you must inform the person of his or her *Charter* rights. For example, your examination may reveal that the person you are examining is a Canadian citizen who may come into Canada by right. However, you suspect that the person is a smuggler. If you start to question the person concerning his or her smuggling activities, any information you obtain before informing the person of his or her *Charter* rights may not be used in subsequent prosecutions against the person. Once you establish the person's right to come into Canada, any delay may be considered detention. You may only search a Canadian when you have reasonable and probable grounds to believe that the person is involved in a smuggling operation or some other criminal breach of the Act.

Any documents found during a search will be seized under the Act under which the search was commenced. If Customs is conducting the search at your request, the documents will be seized under the *Immigration Act*. If Customs officers search as a result of a Customs secondary examination, the documents will be seized under the *Customs Act*.

3.8 Damage to property

If an examination results in damage to the traveller's conveyance or baggage, you must prepare a report indicating the extent of the damage and other relevant particulars of the examination. For the regulations and policy for handling damage claims against the Crown, see part 41 of the *Financial Management Manual*.

When a search brings no results, and the search resulted in damage to the person's belongings, it is the department's policy to repair the conveyance or item to its original state. Customs has the same policy. When it is

apparent that items may be damaged during a search because of their state of repair or fragility, you should take *before* and *after* photographs of the items, to avoid the department having to pay for damages unrelated to the search.

4. SEIZING DOCUMENTS

You may seize and hold at a POE any travel or other documents that may be used for the purpose of determining whether a person may be granted admission or may come into Canada, where you believe, on reasonable grounds, that action is required to facilitate carrying out any provision of the Act or its regulations [A110(2)(b)].

Under A110(2)(c) you have the authority to seize and hold any travel or other documents if you believe, on reasonable grounds, that they have been fraudulently or improperly obtained or used, or that action is necessary to prevent their fraudulent or improper use.

4.1 When to seize documents

You should not regard the phrasing of A110(2)(b) ("required to facilitate the carrying out of any provision of this Act or the regulations") as providing you with the authority to seize documents, especially travel documents, for the sake of mere convenience. You should seize and retain travel documents only in cases where:

- the person concerned has been arrested under the Act
- the person concerned is detained for inquiry or removal
- the documents may be required as evidence at the inquiry
- you have reasonable grounds to believe that the person may deliberately lose or destroy the documents to prevent or delay his or her removal from Canada or to conceal his or her identity, or
- you have reasonable grounds to believe that the documents have been fraudulently or improperly obtained or used, or may be fraudulently or improperly used [A110(2)(c)].

Airline tickets

The term "other documents" used in A110(2) is wide enough to include airline tickets. However, in order to seize and hold the document under A110(2)(c), the officer must have reasonable grounds to believe that the ticket has been "fraudulently or improperly obtained..." Since the test for reasonable grounds depends upon the circumstances of each case, it is impossible to give a complete list of situations. In some cases that decision will be relatively easy, i.e., you find that the passport is also fraudulent and contains the same alias as on the ticket. In such a case you may reasonably conclude that the ticket is being used in order to gain illegal entry to Canada.

You should be aware that just because the name on the ticket and the name of the individual do not match, this does not necessarily mean that the ticket was fraudulently obtained. For example, the discrepancy between the name on the ticket and that of its holder can be the result of an error by the airline. Or, it could be that the individual bought the ticket from a friend or relative who could not use it.

In all cases where you seize documents you must issue the person a Seizure of Documents (Section 110 of the *Immigration Act*) form (IMM 5079; see APPENDIX C).

4.2 Protecting evidence

An officer may be required to testify in court that a document collected as evidence has remained unchanged since it came into his or her possession: in other words, that the continuity of evidence has been maintained. Whatever evidence comes into your possession, you must note the date, time and place of the case file and in your notebook.

To maintain the continuity of evidence for the purposes of prosecution under the Act or *Criminal Code*, officers must ensure that seized documents are kept in a secure area and handled by a minimum number of persons.

Make a photocopy of the document, and on each page stamp *certified true copy* and write your initials, the time and the date.

Seal the evidence in an envelope, write your initials across the envelope seal and secure it with transparent tape. On the envelope, write a description of the contents, your initials, the name and file number of the person concerned and the time and date.

If an authorized officer needs to remove evidence from the envelope for examination, he or she must repeat the steps just described above. If an officer only needs to refer to a document, he or she should refer to the certified true copy on file.

If a peace officer requires possession of the document from the immigration file for prosecution, you should:

- verify the contents of the envelope with the peace officer against the certified true copy on file, and
- complete a Document Transit and Receipt (form ADM 2491; see APPENDIX D) and place a copy on file.

You should make a note of these procedures, place the note on file for future reference, and enter the information in your official notebook.

4.3 Disposition of seized documents

You should return any seized document to its rightful holder when there is no longer a need to retain it:

- when the person has been admitted or allowed to come into Canada, or
- at the time the person is removed from Canada or allowed to leave Canada [*Immigration Regulations*, s. 49(1)].

When returning a document always note the details on the file and complete the reverse of form IMM 5079 (see APPENDIX C). For example:

Passport number 12345 issued in Norway was returned to the holder John Doe, *date of birth*, on 13 July 1993.

Do not return the following documents to the person from whom they were seized:

- fraudulently obtained documents
- fraudulent documents (for example, altered or photo-substituted)
- known or suspected counterfeit documents, and
- genuine documents that contain counterfeit or altered visas, stamps and so forth [*Immigration Regulations*, s. 49(2)].

- fraudulently obtained airline tickets seized under A110(2)(c) will not be returned to the airline but rather destroyed. This procedure will mean that the ticket will not be fraudulently used again and that its holder will not profit from its resale [*Immigration Regulations*, s. 49(2)(b)].

You should forward all known or suspected counterfeits, including documents containing counterfeit visas or stamps, and all altered documents that have not already appeared in the *Fraudulent Document Guide*, by secure means to:

Chief, Intelligence and Interdiction
9th Floor, Phase IV
Place du Portage
Hull, Québec K1A 1L1.

Retain all other documents on file or dispose of those documents in accordance with s. 49 of the *Immigration Regulations*.

When you send a document to Intelligence and Interdiction, complete copy 2 of form IMM 5079 and include all available information regarding the circumstances of the seizure of the document.

If your CIC needs an analysis of a document for an inquiry or other purpose, complete copy 2 of IMM 5079 and send it to the Intelligence Division, who in turn will send it to the RCMP Central Forensic Laboratory. The Intelligence Division will return the laboratory report to your CIC, which in most cases will suffice as evidence at an inquiry. If you need the original document back, clearly state in your accompanying report by what date it will be required.

The Intelligence Division will retain documents that are not returned to the CIC as specimens for training, or will dispose of them in accordance with s. 49 of the *Immigration Regulations*.

Before retiring a file, you should return other documents (such as Social Insurance Number cards) to the issuing authority, with a memorandum outlining how they came into immigration's possession.

5. SEIZING PRIVATE VEHICLES

A vehicle is any conveyance that may be used for transportation by water, land or air [A2(1)]. This section deals with the seizure of private vehicles. For further information on seizing other vehicles, see chapter PE 13, *Holding, Detaining and Seizing Vehicles*.

Under A102.01(1) you have the authority to seize a vehicle if you believe on reasonable grounds that the vehicle was used in any manner in connection with the commission of an offence under A94.1, A94.2, or A94.4.

Sections 94.1 and 94.2 provide that:

Every person who knowingly organizes, induces, aids or abets or attempts to organize, induce, aid or abet the coming into Canada of a person who is not in possession of a valid and subsisting visa, passport or travel document where one is required by this Act or the regulations is guilty of an offence...[A94.1].

Every person who knowingly organizes, induces, aids or abets or attempts to organize, induce, aid or abet the coming into Canada of a group of ten or more persons who are not in possession of valid and subsisting visas, passports or travel documents where such visas, passports or travel documents are required by this Act or regulations is guilty of an offence...[A94.2].

In this context:

- *aid* means helping or promoting
- *abet* means encouraging or assisting, and
- *induce* means prevailing upon or persuading.

To seize a vehicle, it is not necessary that charges be laid. However, we recommend that you contact the RCMP and request them to lay charges. You should collaborate with the RCMP when you seize a vehicle under A102.01(1).

Two examples of circumstances where A102.01(1) might apply are:

- you find a person who lacks the required visa, passport or travel document hiding in the trunk of a car or otherwise hiding in a vehicle, and
- the driver of a vehicle tries to misrepresent the identity or nationality of someone lacking the required documents.

In these instances, the “knowingly” and “reasonable grounds” tests will normally be easily met.

In all instances you must obtain the concurrence of your supervisor before undertaking the seizure.

Complete a Notice of Seizure of a Vehicle form (IMM 5265; see APPENDIX E), and send a copy to the Director, Port of Entry Control as soon as possible. Full details of the events that led to the seizure of the vehicle must accompany this report.

6. FINGERPRINTS AND PHOTOGRAPHS

Subsection 110(2) of the Act and s. 44 of the *Immigration Regulations* provide the legal authority for fingerprinting and photographing persons. The intent of these provisions is to assist you in identifying individuals where some doubt exists respecting their identities. An IO may require the following persons to be fingerprinted and photographed:

- persons who seek admission [*Immigration Regulations*, s. 44(a)]
- applicants for visas or other documents at a visa office [A9(1), A10; *Immigration Regulations*, s. 44(b)]
- applicants for landing in Canada [A10.2(1); *Immigration Regulations*, s. 44(b)]
- applicants to vary or cancel terms of admission [A16; *Immigration Regulations*, s. 44(b)]
- persons arrested under A103 [*Immigration Regulations*, s. 44(c)]
- persons against whom removal orders or conditional removal orders have been made [*Immigration Regulations*, s. 44(d)], and
- persons who claim to be Convention refugees under A44(1) [*Immigration Regulations*, s. 44(e)].

6.1 Taking a set of fingerprints

To take a proper set of fingerprints, you need:

- a *print take ink strip*: an inked strip containing a special ink for fingerprinting (some offices use inkless pads)
- a *print retainer pad*: a rubberized pad to hold the ink strip flat
- *fingerprint forms*: C-216 and C-216C
- a *print form holder*: a holder that contains the fingerprint form
- a *pen*, and
- a *stand* or table to hold the materials.

The hands of the person being fingerprinted must be clean. While normal washing with soap and water is all that is required, persons with fine, shallow friction skin ridges should, regardless of the cleanliness of their hands, wash in very warm water before being fingerprinted. Warm water has a tendency to swell the ridges and this technique results in clear, sharp impressions. The person's hands must be completely dry before fingerprinting. Persons whose hands perspire freely should wipe each digit dry immediately before printing.

Before you insert the fingerprint form into the holder, crease the form horizontally along three lines:

- the horizontal spaces designated for rolled impressions of the right hand
- the spaces for the rolled impressions of the left hand, and
- the space for the plain impression.

If you make these three folds, the form will lie flat, firmly and without bulging, after you insert it in the holder.

Insert the fingerprint form in the holder so that the spaces designated for the rolled impressions of the right hand are on the flat, horizontal surface.

Have the person to be fingerprinted stand at forearm's length from the fingerprint stand. You may stand either to the left or the right (whichever is more convenient to you) and slightly in front of the person being fingerprinted. It is important that you advise the person to relax. A completely relaxed position is most desirable because any tension in the hands interferes with the free movement of the fingers, which is necessary for successful fingerprinting. It also prevents you from gauging the amount of pressure needed when you ink and print the digits.

To take rolled impressions, you should:

- a) beginning with the person's right hand and with the fingers closed, grasp the right thumb at the base with either your right or left hand (depending on which side of the person you are standing), supporting its tip with the thumb and index finger of your other hand.
- b) roll the thumb on the ink strip so that the entire bulbous portion (the fingerprint pattern area) is inked, from one edge of the nail to the other, and covering the area from the crease of the end joint to the tip of the digit as far as the rolling will permit.
- c) while still maintaining hold of it, roll the thumb firmly with a similar, continuous and even motion, on the designated right thumb area of the fingerprint form, rotating the digit a full half turn, again from one edge of the nail to the other. *This complete rolling is absolutely necessary to ensure that the entire pattern is reproduced for correct classification.*
- d) ink each of the four fingers of the hand and reproduce them in their respective order in exactly the same manner, and then follow with the left hand.

When you are printing the thumb or any finger, it is important that the person holds his or her remaining digits in a clenched hand formation (a fist), so that they do not in any way interfere with the inking and printing movement.

6.2 Helpful hints for taking good fingerprints

To take good fingerprints, you should:

- a) before taking your first set of prints, ask for a demonstration from an experienced officer.
- b) practise taking a colleague's prints.
- c) not roll the subject's fingerprint on the ink pad in the same place twice. Re-attach the ink pad cover and rub with your hand to smooth out the ridges in the ink.
- d) not apply too much pressure to the finger when taking the print. The darkness of the fingerprint on the form is a result of the amount of ink used, not the pressure. If done properly, the weight of the finger should be sufficient to produce a good quality print as long as you inked the finger properly.
- e) develop a routine whereby you print the fingers in the order in which they appear on the form. At all times, start with the right thumb, continuing with the right index through to the right little finger, and then following with the left thumb, and left forefinger through to the

6.3 Plain impressions

6.4 Completing the C-216 and C-216C fingerprint forms

left little finger. Misplaced rolled impressions on the fingerprint form would result in a non-existent classification, which could never be successfully searched in the fingerprint bureau.

- f) tend to roll thumbs inwardly and fingers outwardly. While there is no set rule governing the direction of rotation of the digits during the inking and printing process, experience has shown that there is a natural tendency for thumbs to yield to an inwardly rotating motion (rolling the right thumb counterclockwise and the left thumb clockwise) and for the fingers to an outwardly rotating motion (rolling the right hand fingers clockwise and those of the left hand counterclockwise).
- g) always centre the core area of the rolled impressions.

To take plain impressions in the lower portion of the fingerprint form, you should:

- take the impressions with the four fingers of the hand extended.
- working with one hand at a time, place the fingers simultaneously on the ink strip, applying firm pressure equally to all to ensure even inking.
- then place the hand on the appropriate space on the form, again exerting even pressure to ensure uniform simultaneous printing.
- when obtaining plain impressions, allow for flattening of the inked fingers. The fingers should not be held together too tightly. This will ensure the reproduction of the greatest possible portion of the pattern in each finger. Ink and record the thumbs similarly in the appropriate spaces without rolling.

Plain impressions serve to verify the accuracy of the sequence of the rolled impressions for the classifier and searcher in the fingerprint section of the RCMP.

Use a Fingerprint Identification form (C-216; see APPENDIX F) for fingerprinting:

- all refugee claimants
- anyone who you suspect of having a criminal record, and
- anyone who is facing charges under the Act.

You should also use the C-126 for foreign exchange requests and multiple refugee checks.

For all other persons (including visa and security checks), use a Fingerprint Identification form (C-216C; see APPENDIX G). This includes fingerprints for the purpose of visas, security checks, and landing checks (permanent residence status).

Once you have taken the fingerprints, ensure that you have completed the bottom half of the form accurately:

- *Name and Address of Contributing Agency:* give the complete mailing address for your office

- *Contributor's Number*: is the number used to identify the person being printed. In your case this is both the file number and the ID number from the Field Operational Support System (FOSS). Do not use the upper right corner box of the fingerprint form, which is for RCMP use only.
- *Occupation*: what the person last did. Everybody has worked at something — being a student, for example. It is not acceptable to say “unemployed”.
- *Peculiarities, etc.*: include only those that are obvious, as well as any physical abnormalities and mannerisms. Describe the person using specific observed physical characteristics.
- *Other Names, Aliases, Nicknames, Maiden Name, etc.*: if there are none, put in *None known*.
- *Case Handled by*: complete only when the case is being handled by an officer other than the contributor of the fingerprints.
- *Charge and Disposition*: indicate why the person is being fingerprinted; for example: *Refugee claimant* or *Charged under section _ of the Immigration Act*.

When you fingerprint a person whom you suspect has spent time in the U.S., indicate in the *Reasons for Application* box on the fingerprint form that you are also requesting a U.S. check. The RCMP will forward the fingerprints to the U.S. authorities for checking against their indices.

Because the biographical data is important, your handwriting should be neat and legible.

Retain photographs on file, and send them to the RCMP only at their request.

Mail the completed forms on a daily basis or at the end of your shift. Do not retain the fingerprint forms and send them in at the end of a series of shifts. This will slow down response time by the RCMP and backlogs will develop.

Send all C-216 forms to:

Commissioner, RCMP
 Attention: Officer in Charge
 Immigration and Passport Branch
 Room H-421
 1200 Vanier Parkway
 Ottawa, Ontario
 K1A 0R2

All fingerprints submitted to the Immigration and Passport section of the RCMP are automatically checked against the Criminal Record Data Bank. If you indicated *Refugee claimant* in the *Reasons for Application* box, the RCMP also check the prints against the refugee bank. The RCMP will do an additional U.S. check only if you specifically requested one.

Send all C-216C forms to:

Commissioner, RCMP
 Attention: Identification Services Directorate
 Civil Section
 P.O. Box 8885
 Ottawa, Ontario
 K1G 3M8

Fingerprints of Convention refugees will be destroyed when the person becomes a Canadian citizen, in accordance with A110(2.1). You should advise the RCMP when a person obtains citizenship, so that the RCMP can return the original fingerprints to the CIC.

APPENDIX A
SAMPLE OF IMM 5242 (2-94) B - PERSONAL SEARCH

Citizen and Immigration Services / Citoyenneté et Immigration Canada		PROTECTED WHEN COMPLETED PROTÉGÉ UNE FOIS REMPLI	
SEARCH / FOUILLE		DATE _____ POSS ID - IDENT. 2308L	
TRAVELLER INFORMATION - RENSEIGNEMENTS SUR LE VOYAGEUR		FILE NO. - N° DE DOSSIER	
SURNAME - NOM DE FAMILLE _____ GIVEN NAMES - PRÉNOM _____		SEX / SEXE <input type="checkbox"/> MALE / HOMME <input type="checkbox"/> FEMALE / FEMME	
ADDRESS - ADRESSE _____		DATE OF BIRTH / DATE DE NAISSANCE _____ D-J M Y-A	
		IDENTIFICATION / PIÈCE D'IDENTITÉ _____	
PART A - SEARCH (NO AUTHORIZATION REQUIRED) / PARTIE A - FOUILLE (AUCUNE AUTORISATION NÉCESSAIRE)			
PRELIMINARY SEARCH (SEARCH OF CARRY-ON LUGGAGE BY THE EXAMINING OFFICER) FOUILLE PRÉLIMINAIRE (FOUILLE DES BAGAGES À MAIN PAR L'AGENT EXAMINATEUR)			
FULL EXAMINATION (SEARCH OF CHECKED BAGGAGE OR THE VEHICLE BY THE CUSTOMS OFFICER ON OUR BEHALF) EXAMEN COMPLET (FOUILLE DES BAGAGES CONSIGNÉS OU DU VÉHICULE PAR L'AGENT DES DOUANES EN NOTRE NOM)			
TYPE OF SEARCH / TYPE DE FOUILLE <input type="checkbox"/> PRELIMINARY / PRÉLIMINAIRE <input type="checkbox"/> FULL EXAMINATION / EXAMEN COMPLET <input type="checkbox"/> LUGGAGE / BAGAGES <input type="checkbox"/> VEHICLE / VÉHICULE			
REASONABLE GROUNDS FOR SEARCH (TO BE COMPLETED BY EXAMINING OFFICER) MOTIFS RATIONNELS POUR LA FOUILLE (REMPLI PAR L'AGENT EXAMINATEUR)			
RESULTS / RÉSULTATS <input type="checkbox"/> NEGATIVE / NÉGATIF <input type="checkbox"/> POSITIVE / POSITIF (Provide details / Préciser)			
SEARCHING OFFICER - AGENT CHARGÉ DE LA FOUILLE			
NAME (PRINT) - NOM (en lettres imprimées) _____		SIGNATURE _____	
WITNESS TO SEARCH - TÉMOIN DE LA FOUILLE			
NAME (PRINT) - NOM (en lettres imprimées) _____		TITLE / TITRE _____	
SIGNATURE _____		SIGNATURE _____	
PART B - PERSONAL SEARCH (AUTHORIZATION OF SIO REQUIRED) / PARTIE B - FOUILLE SUR LA PERSONNE (AUTORISATION DE L'AP NÉCESSAIRE)			
TYPE OF SEARCH / TYPE DE FOUILLE <input type="checkbox"/> FREE / SUR LA PERSONNE <input type="checkbox"/> DISARMEMENT / PRÉHENSION D'OBJET (SEE PART C / VOIR PARTIE C)			
REASONABLE GROUNDS FOR PERSONAL SEARCH (TO BE COMPLETED BY EXAMINING OFFICER) MOTIFS RATIONNELS POUR FOUILLER LA PERSONNE (REMPLI PAR L'AGENT EXAMINATEUR)			
I CONCUR / JE SUIS D'ACCORD _____		SIGNATURE OF SENIOR IMMIGRATION OFFICER / SIGNATURE DE L'AGENT PRINCIPAL _____	
I DO NOT CONCUR / JE NE SUIS PAS D'ACCORD _____		SIGNATURE OF SENIOR IMMIGRATION OFFICER / SIGNATURE DE L'AGENT PRINCIPAL _____	
		REASONS - RAISONS _____	
RESULTS / RÉSULTATS <input type="checkbox"/> NEGATIVE / NÉGATIF <input type="checkbox"/> POSITIVE / POSITIF (Provide details / Préciser)			
SEARCHING OFFICER - AGENT CHARGÉ DE LA FOUILLE			
NAME (PRINT) - NOM (en lettres imprimées) _____		SIGNATURE _____	
WITNESS TO SEARCH - TÉMOIN DE LA FOUILLE			
NAME (PRINT) - NOM (en lettres imprimées) _____		TITLE / TITRE _____	
SIGNATURE _____		SIGNATURE _____	

IMM 5242 (2-94) B

Canada

PART C - DISOUBLEMENT - PARTIE C - PERSONNE DÉVOTUE			DID INDIVIDUAL CONTACT COUNSEL? LE CONSEIL A-T-ELLE COMMUNIQUÉ AVEC UN CONSEIL?		DID COUNSEL ARRIVE? LE CONSEIL EST-IL VENU?		NAME AND ADDRESS OF COUNSEL NOM ET ADRESSE DU CONSEIL	
WAS AN INDIVIDUAL ADVISED OF RIGHT TO COUNSEL? LA PERSONNE A-T-ELLE ÉTÉ INFORMÉE DE SON DROIT À UN CONSEIL?			<input type="checkbox"/> YES OUI <input type="checkbox"/> NO NON		<input type="checkbox"/> YES OUI <input type="checkbox"/> NO NON			
<input type="checkbox"/> YES OUI <input type="checkbox"/> NO NON			<input type="checkbox"/> YES OUI <input type="checkbox"/> NO NON		<input type="checkbox"/> YES OUI <input type="checkbox"/> NO NON			
RESULTS - RÉSULTATS								
SEARCHING OFFICER - AGENT CHARGÉ DE LA FOUILLE								
NAME (Nom) - NOM (see below instructions)					SIGNATURE			
WITNESS TO SEARCH - TÉMOIN DE LA FOUILLE								
NAME (Nom) - NOM (see below instructions)		TITLE		SIGNATURE				

PART D - PERSONAL EFFECTS RECORD (To be maintained until removal)

PARTIE D - LISTE DES EFFETS PERSONNELS (Tenir jusqu'au déchargement du personnel)

COUNTRY OF CURRENCY UNITE MONETAIRE DE QUEL PAYS ?		CHEQUES - CHEQUES	
CASH - ARGENT COMPTANT			
TOTAL		TOTAL	

PART E - DETAILS OF ITEMS SEIZED UNDER THE ACT		
PARTIE E - EFFETS PERSONNELLS SAISIS EN VERTU DE LA LOI SUR L'IMMIGRATION		
1.		5.
2.		6.
3.		7.
4.		8.

I ACKNOWLEDGE THAT ALL MY PERSONAL EFFECTS HAVE BEEN RETURNED TO ME. JE RECONNAIS QUE TOUTS MES EFFETS PERSONNELS SAUF LES ARTICLES MENTIONNÉS À LA PARTIE «B» M'ONT ÉTÉ REMIS.	
SIGNATURE OF PERSON SEARCHED SIGNATURE DE LA PERSONNE FOULÉE	SIGNATURE OF WITNESS - SIGNATURE DU TÉMOIN
SIGNATURE OF SEARCHING OFFICER - SIGNATURE DE L'AGENT CHARGÉ DE LA FOULÉE	

01-94

APPENDIX B

THE IMMIGRATION OFFICER'S NOTEBOOK AND TAKING NOTES

Your *Immigration Officer's Notebook* (form IMM 5104) is an essential tool, and you will use it to refresh your memory at a later date: for example, when preparing accurate detailed reports or when forming a basis for testimony if you are called on to testify at inquiry or in court. As a representative of the department, you must use the notebook appropriately. This in turn will promote a professional and credible image.

The Enforcement Branch has developed the notebook, and it is consistent with the form preferred by the courts. The notebook also contains reference material in the back to assist you during the course of your duties.

Some situations in which you will use it are:

- at inquiry
- in court
- for A103 arrests
- on escort officer duties
- when a person eludes examination at a POE
- when a person makes false or misleading statements
- as a witness to an offence
- providing assistance to other departments
- assisting Customs officers in search and seizure
- when a person assaults a peace officer
- when a person commits other offences
- testimony in the U.S. under the *Mutual Legal Assistance in Criminal Matters Act*, and
- handling complaints.

1. DESCRIPTION OF THE IMMIGRATION OFFICER'S NOTEBOOK

The *Immigration Officer's Notebook* is divided into three sections:

- **the cover:** this section contains essential data that may be required during legal proceedings. You should always complete this data before making your first entry. For obvious reasons you cannot note the last entry date until the notebook is full or returned for storage.
- **blank pages:** this section consists of 100 numbered pages for note-taking. Each page has a left margin where you should note appropriate times and a page number in the bottom right. Do not exceed this number of entries.
- **reference pages:** this section contains the following information:
 - 10 signal codes for two-way radio usage
 - frequently used telephone numbers
 - phonetic alphabet
 - *Canadian Charter of Rights and Freedoms* (the Charter)
 - Vienna Convention
 - caution and secondary caution to charged person
 - description of person
 - height-weight conversion tables
 - Social Insurance Number (SIN) register

- reportable sections of the Act
- offences and punishment
- arrest and detention, and
- arrest without warrant under the *Criminal Code*.

2. NOTEBOOK SECURITY

Your notebook will contain personal and sensitive data, and you must give it the same security as other departmental information such as files. CICs must retain completed notebooks in the same secure fashion as files and for the same period of time as required by our file-retention policy. CICs may need to retain notebooks for an extended period because of lengthy court cases or notes concerning a continuing case file.

Officers leaving the department must turn in all completed or partially completed notebooks. This procedure mainly applies to summer students, term, seasonal and casual employees.

Managers and supervisors are responsible for reviewing officers' notebooks continually (National Headquarters suggests every three months). The officer conducting the review should note the time, date, review period and his or her initials on the line following the officer's last entry.

3. GENERAL RULES FOR NOTE-TAKING

You should observe the following general rules for taking notes:

- make all notes in your own handwriting and in pen. Try to use only one type of pen, preferably black. If you keep switching pens, someone could assume that you made additions long after the fact.
- try to leave large spaces between writings.
- keep cases separate.
- always relate information to its source: for example, *weather 6°C (newspaper)*
- clearly label your opinions as opinions.
- rule off the last line after each day.
- remember that notebook contents depend on the circumstances. Notes could simply include *time, day, date, weather, time on duty, and time off duty*

4. NOTE FORMAT

The RCMP has suggested the rough note complete note (RN-CN) format. This format allows you to make factual notes at the time and later write a detailed synopsis of the events. You should place the RN and CN abbreviations in the left margin to indicate the format clearly.

The general format is equally acceptable. A number of enforcement agencies use this format, which is basically a detailed factual synopsis of events. You should remember to be consistent in the format you choose.

The Investigator's Guide includes samples of both formats.

5. USING THE NOTEBOOK AT INQUIRY, COURT OR OTHER LEGAL PROCEEDINGS

In court or at an inquiry you will be presenting your personal account of the events before, during and after an occurrence. Because it is virtually impossible for you to remember every detail accurately, the judge or adjudicator will have no objection to your refreshing your memory from notes that you made at the time of the occurrence. Introducing a notebook into a courtroom procedure is a privilege, and as a common courtesy before you consult your notes you should seek permission from the judge or adjudicator. You could ask, for example:

Your Honour or Madam adjudicator or Mr. adjudicator, may I refresh my memory from notes that I made at the time of the incident or investigation or arrest or detention or escort or report or occurrence?

Once you use your notebook, your notes can be introduced as an exhibit and examined by the defence lawyer. The defence lawyer will be attempting to identify irrelevant material that can discredit your testimony or credibility.

Even if you do not use your notebook, a judge can request that you produce it. The judge decides whether to accept your notes as evidence. You should always refresh your memory before testifying.

For testimony, you should be aware of the following points:

- your notes should be clear, concise, legible, understandable, accurate, complete and sequential.
- be consistent in your note-taking: that is, always start each day the same way (for example: *time, day, date, and weather conditions*), and record information in the same manner (with names, for example: *last name, first given name, second given name*).
- lawyers often ask what the weather conditions were at the time of the occurrence to test your powers of recall.
- notes should contain only information that relates to work: that is, no personal information to avoid embarrassment or explanation.
- make your notes at the time of your observations, or as soon after as possible; the courts have held that the maximum time afterwards is 24 hours.
- all notes should be factual, not inferences or evaluative statements. You may, however, give your assessment of a situation supported by observations (for example: *Your Honour, in my opinion he appeared to be intoxicated by alcohol or a drug. This is based on the following observations I made at the time...*).
- collaboration to a certain extent between officers when you complete your final notes is perfectly acceptable. This avoids explaining under cross-examination any needless discrepancies between notebooks. You must not collaborate with other officers to alter facts or the sequence of events, because defence counsel may suggest that you collaborated to provide a single version of events.
- if you take a statement or record a question-and-answer interview in your notebook, the witness or the person directly involved should sign the statement or interview notes.
- note-taking during certain situations is not always possible, and can be dangerous if an individual becomes violent when you do not have your hands free to defend yourself.
- a recommended sequence for recording notes in a detailed chronological order is *who, what, where, when, why and how*.
- detailed notes are better than missing a key point.
- always prepare an unbiased, detailed account of events you have witnessed or received
- small diagrams are permissible provided that they are clear.
- you may use abbreviations, but they should be consistent to avoid confusion.
- you may use sections of the Act or *Criminal Code*, but make sure that they are accurate.
- always note whether dates, times or figures are exact or approximate.
- use all lines and do not skip pages.
- do not tear out or remove loose pages.
- do not use correction fluid, erase or scribble out mistakes. Draw a fine line through the note to be corrected, ensuring that you do not block out your original writing, and initial it.

Only the pages with information on the case can be produced or viewed in court. All other information is protected under the *Privacy Act* and *Access to Information Act*. To avoid a defence lawyer's attempting to flip through irrelevant pages, you should use paper clips. You could then say:

Your Honour or Madam adjudicator or Mr. adjudicator, I have marked the pages relevant to this case. The other pages clipped together contain information pertaining to other cases unrelated to this one, and are protected under the Privacy Act and the Access to Information Act.

6. PRIVACY ACT AND ACCESS TO INFORMATION ACT

Your official notebook (IMM 5014) is a record within the meaning of the *Access to Information Act*, and contains personal information within the meaning of the *Privacy Act*. The courts have determined that it is a record under the control of a government department, and that it is subject to the same exemptions under the *Access to Information Act* that apply in individual cases.

When you enter information in your notebook, you should remember that a request under the *Access to Information Act* to gain access to an individual's case file might also include your notebook. The possibility that information in your notebook may be disclosed should not discourage you from maintaining accurate, candid notes. If you follow all the general rules in this appendix, you should not be concerned if the contents of your notebook are released. Some information might be protected and not accessible, and access can be granted only to information concerning the individual making the request.

APPENDIX C
SAMPLE OF IMM 5079 (12-92) B - SEIZURE OF DOCUMENTS (SECTION 110 OF THE IMMIGRATION ACT)



Employment and
Immigration Canada

Emploi et
Immigration Canada

PROTECTED WHEN COMPLETED
protégé une fois rempli

**SEIZURE OF DOCUMENTS
(SECTION 110 OF THE IMMIGRATION ACT)**

**SAISIE DE DOCUMENTS
(ARTICLE 110 DE LA LOI SUR L'IMMIGRATION)**

TO:
A:

Name of person concerned / Nom de la personne concernée

Under the authority of Paragraphs 110 (2) (b) and/ or (c), as detailed hereunder, I am seizing and retaining the following document(s) found in your possession:

En application des alinéas 110 (2) b) et (ou) c), exposés ci-dessus, je saisis et conserve les documents suivants trouvés en votre possession :

A 110 (2) (b) and (c)

L 110 (2) b) et c)

(2) An immigration officer may

(2) L'agent d'immigration a le pouvoir

(b) seize and hold at a port of entry or in Canada any travel or other documents that may be used for the purpose of determining whether a person may be granted admission or may come into Canada where the immigration officer believes on reasonable grounds that that action is required to facilitate the carrying out of any provision of this Act or the regulations; and

b) de saisir et retenir, à un point d'entrée ou sur le territoire canadien, tous documents de voyage ou autres pouvant servir à déterminer si une personne peut obtenir l'admission ou entrer au Canada, lorsqu'il a des motifs raisonnables de croire qu'une telle mesure s'impose pour faciliter l'application de la présente loi ou de ses règlements;

(c) seize and hold any documents if the immigration officer believes on reasonable grounds that they have been fraudulently or improperly obtained or used or that that action is necessary to prevent their fraudulent or improper use.

c) de saisir et retenir tous documents de voyage ou autres s'il croit, pour des motifs raisonnables, qu'ils ont été obtenus ou utilisés irrégulièrement ou frauduleusement, ou qu'une telle mesure s'impose pour empêcher l'utilisation irrégulière ou frauduleuse.

Office / Bureau		Signature of Immigration Officer Signature de l'agent d'immigration	
File No. / N° de dossier	Date	B-J	M Y-A

The information provided on this form is collected under the authority of the Immigration Act. It is protected by the Privacy Act, is accessible to you and will be stored in Personal Information Bank number EIC PPU 270.
Les renseignements fournis dans le présent document sont recueillis en vertu de la Loi sur l'immigration. Ils sont protégés par la Loi sur la protection des renseignements personnels et sont versés au fichier de renseignements personnels CE/PPU 270 que vous pouvez par ailleurs consulter.

**DETAILS OF DOCUMENT SEIZURE - FOR INTERNAL INTELLIGENCE NETWORK
RENSEIGNEMENTS SUR LES DOCUMENTS SAISIS - POUR LE RÉSEAU INTERNE DE RENSEIGNEMENTS**

Date and place of birth of person named above Date et lieu de naissance de l'intéressé		Citizenship Citoyenneté	C.I.B.R. D.P.R.P.
Name and address of person who supplied document(s) / Nom et adresse de la personne qui a fourni le(s) document(s).			
Amount paid (Canadian equivalent) for document(s) Somme versée (en dollars canadiens) pour le(s) document(s)		Type of document(s) / Genre de document(s)	
\$		Issuing country Pays de délivrance	Document No. - N° du document
<input type="checkbox"/> Previously Identified - Identifié antérieurement <input type="checkbox"/> New Type of Fraud - Nouveau type de fraude		Improperly Documented Arrival Telex Ref. No. N° du télex sur la personne non munie des documents requis	
Document Sent to NHC - Intl. Document envoyé à l'AC-Intl.	<input type="checkbox"/> Yes <input type="checkbox"/> Out <input type="checkbox"/> No <input type="checkbox"/> Non	Document Needed for Inquiry / Removal Document requis pour enquête/renvoi	<input type="checkbox"/> Yes <input type="checkbox"/> Out <input type="checkbox"/> No <input type="checkbox"/> Non
Analysis Required Analyse requise	<input type="checkbox"/> Yes <input type="checkbox"/> Out <input type="checkbox"/> No <input type="checkbox"/> Non	If Yes, When ? Si oui, quand ?	

IMM 5079 (12-92) B

**2 INVESTIGATION / INTELLIGENCE
ENQUÊTE / RENSEIGNEMENT**

Canada

APPENDIX D
SAMPLE OF FORM ADM 2491 (11-88) B - DOCUMENT TRANSIT AND RECEIPT



Employment and Immigration Canada Emploi et Immigration Canada

DOCUMENT TRANSIT AND RECEIPT
REÇU DE TRANSMISSION DE DOCUMENTS

TO: _____
A: _____

SECURITY CLASSIFICATION — CATEGORIE SÉCURITÉ	
WITH DOCUMENT AVEC DOCUMENT	WITHOUT DOCUMENT SANS DOCUMENT
<input type="checkbox"/> TOP SECRET — TRÈS SECRET	<input type="checkbox"/>
<input type="checkbox"/> SECRET	<input type="checkbox"/>
<input type="checkbox"/> CONFIDENTIAL — CONFIDENTIEL	<input type="checkbox"/>
<input type="checkbox"/> RESTRICTED — DIFFUSION RESTREINTE	<input type="checkbox"/>
<input type="checkbox"/> UNCLASSIFIED — NON CLASSIFIÉ	<input type="checkbox"/>

QTY-QTÉ : NO COPIES NO.	REFERENCE-RÉFÉRENCE	DESCRIPTION

FROM — DE
SIGNATURE

BRANCH — DIRECTION

DATE

RECEIPT REQUIRED
REÇU EXIGÉ

YES—OUI ☐

NO—NON ☐



SIGNATURE

DATE

ADM 2491 SE - 1 (11-88) B

Canada

APPENDIX E

SAMPLE OF IMM 5265 (09-93) B - NOTICE OF SEIZURE OF A VEHICLE



Employment and
Immigration Canada

Emploi et
Immigration Canada

NOTICE OF SEIZURE OF A VEHICLE
AVIS DE SAISIE D'UN VÉHICULE

(Pursuant to sections 102.01 or 102.02 of the Immigration Act)
(En application des articles 102.01 et 102.02 de la Loi sur l'immigration)

To: (master, captain or other person
A: in charge of the vehicle)
(responsable du véhicule)

WITH RESPECT TO the vehicle described hereunder,
AVIS CONCERNANT le véhicule décrit ci-dessous

I hereby advise you that I have reasonable grounds to believe that the above-described vehicle was used in connection with a contravention of section ☐ 94.1 ☐ 94.2 ☐ 94.4 of the Immigration Act.
PURSUANT to the authority granted to me by section 102.01 of the Immigration Act, I hereby order said vehicle seized as forfeit.

Je vous informe par les présentes que j'ai des motifs raisonnables de croire que le véhicule décrit ci-dessus a été utilisé en rapport avec une infraction visée à l'article ☐ 94.1 ☐ 94.2 ☐ 94.4 de la Loi sur l'immigration.
CONFORMEMENT aux pouvoirs que me confère l'article 102.01 de la Loi sur l'immigration, j'ordonne par les présentes que ledit véhicule soit saisi à titre de confiscation.

Immigration Officer
Agent d'immigration

Date

Note: Copies of this document are to be sent to parties believed to have a financial interest in the seized vehicle. Pursuant to section 102.20, any person other than the person in whose possession the vehicle was when seized, who claims an interest therein as owner, mortgagee, lienholder or holder of any like interest may, within sixty days after the seizure, apply by notice in writing to a judge for an order described in subsection 102.20(5) of the Act.

Note : Des copies du présent document doivent être envoyées aux parties qui auraient un droit sur le véhicule saisi. En application de l'article 102.20, toute personne, à l'exception de la personne en la possession de laquelle le véhicule se trouvait au moment de la saisie, qui revendique un droit sur le véhicule, à titre de propriétaire, créancier hypothécaire, détenteur de privilège ou titulaire d'un droit analogue peut, dans les soixante jours suivant la saisie, demander par avis écrit, adressé à un juge, que soit rendue l'ordonnance prévue au paragraphe 102.20(5) de la Loi.

IMM 5265 (09-93) B

1 Carrier
Transporteur

2 NHQ POEC
CPE AC

3 CEIC File
Dossier CEIC

Canada

APPENDIX F
SAMPLE OF FORM C-216 - FINGERPRINT IDENTIFICATION

 **Employment and Immigration Canada** **Emploi et Immigration Canada**

IMPORTANT
Before fingerprinting, read Part A and B on reverse.
AVANT de prendre les empreintes, lire les parties A et B du verso.
Do not write in these spaces unless directed to do so by the officer.
Ne pas écrire en these espaces, à moins d'être dirigé par le fonctionnaire.

Applicant's name / Le candidat s'appelle	Last name - Nom Le nom de famille	First name - Prénom Le prénom	Classify / Classer	AFB-E.A.L.D.	Bar Code - Barres à code
Year of birth / Année de naissance					
Thumb - Pouce	Index	Middle - Majeur	Ring - Annulaire	Little - Auriculaire	

IF ANY FINGERPRINT IS NOT RECORDED, GIVE REASON - If mutilated, deformed or injured, give DATE.
S'IL MANQUE UNE EMPREINTE, DONNER RAISON - Si mutilation, déformation ou blessure, donner la DATE.
IF ANY FINGER IS TAKEN TOGETHER - EMPRESSION SIMULTANÉE DES QUATRE DOIGTS

LEFT THUMB - POUCE GAUCHE		RIGHT THUMB - POUCE DROIT	
Name & Complete Address of Contributing Agency/Don. Nom et adresse complète de l'organisme qui contribue	Contributor's no. N° de contributeur	Signature of Officer/Taking Fingerprint Signature du fonctionnaire qui prend l'empreinte	Date
1	2		Y-N M D-J

Signature of Person Fingerprinted (last name and address) - Signature de la personne dont on prend l'empreinte (nom et adresse)

3	4	5
Other Name(s) - Autres noms, surnoms, etc. - autres noms, surnoms, etc., nom de jeune fille, etc.		

5	6
Address - Adresse	Complexion - Teint

7	8	9	10	11
Occupation - Employer - Emploi - employeur	14 Sex - Sexe M <input type="checkbox"/> F <input type="checkbox"/>	15 Hair - Cheveux Y-N M D-J	16 Eyes - Yeux Y-N M D-J	17 Weight - Poids (kg) Y-N M D-J

12	13	14	15	16
Place of Birth (city & province) - Lieu de naissance (ville et province)	18	19	20	21

17 Foreign born, date and date of entry in Canada Né à l'étranger, date et date d'arrivée au Canada	Date
Y-N M D-J	Y-N M D-J

18 Race Y-N M D-J	19 Non White (Specify) Autre (préciser)	20
Y-N M D-J	Y-N M D-J	Y-N M D-J

21 Date of arrest/arresté le	22 Court - Tribunal	23 Investigating Agency - Organisme enquêteur
Y-N M D-J	Y-N M D-J	Y-N M D-J

24 Date of release / Date de libération	25 Charge - État - Statut	26 Disposition - Disposition
Y-N M D-J	Y-N M D-J	Y-N M D-J

FINGERPRINT IDENTIFICATION
RECHERCHE D'IDENTIFICATION DES EMPREINTES

Form C-216

APPENDIX G
SAMPLE OF FORM C-216C - FINGERPRINT IDENTIFICATION

FOR IDENTIFICATION PURPOSES ONLY - AUX FINS DE L'IDENTIFICATION SEULEMENT				
<p>Do not write in shaded areas. Forward completed form to:</p> <p>Commissioner, RCMP Attention: Identification Services Directorate, Civil Section PO Box 8845 Ottawa, Ontario K1G 3M8</p>		<p>No pas écrire dans les zones ombrées. Transmettre la formule échantillon remplie à l'adresse suivante:</p> <p>Le commissaire de la G.R.C. À l'att. de la Direction du service de l'identité judiciaire, Section des affaires civiles C.P. 8845 Ottawa (Ontario) K1G 3M8</p>		<p>APR-2-10-11</p>
<p>Thumbs-Pous</p>		<p>Index</p>	<p>Middle-Middle</p>	<p>Ring-Anulaire</p>
<p>Little-Auriculaire</p>				
<p>IF ANY FINGERPRINT IS NOT RECORDED, GIVE REASON - IF AMPUTATED, REFORMED OR INJURED, GIVE DATE S'IL MANQUE UNE EMPREINTE, DONNER RAISON - SI AMPUTATION, DE REFORMATION OU DE BLESSURE, DONNER LA DATE</p> <p>POUR FINGER TAKEN TOGETHER - EMPRESSION SIMULTANÉE DES QUATRE DOIGTS</p>				
<p>LEFT THUMB-POUCE GAUCHE RIGHT THUMB-POUCE DROIT</p>				
<p>Signature of Person Fingerprinting Signature de la personne des empreintes</p>		<p>Signature of Officer Taking Fingerprint Signature du policier aux empreintes</p>		<p>Date</p> <p>Y-A M D-J</p>
<p>Summe (incluse forme nommée, maison nommée, etc.) - Nom de famille (y compris nom utilisé précédemment, nom de jeune fille, etc.)</p>				
<p>Given Name-Prénoms</p>		<p>DOB-D.O.M. Y-A M D-J Sex-Sexe Telephone No.-N° de téléphone</p>		
<p>Address-Adresse</p>		<p>Postal Code-Code postal</p>		
<p>REASON FOR APPLICATION (VISA, ADOPTION, ETC.) RAISON DE LA DEMANDE (VISA, ADOPTION, ETC.)</p>		<p>Level of Clearance Required-Niveau d'habilitation sécuritaire requis</p>		
<p>Name & Address of Fingerprinting Dept. or Agency Nom et adresse du service ou de l'organisme prenant les empreintes</p>		<p>Name & Address of Contributing Agency/Dept Nom et adresse du service ou de l'organisme contributeur</p>		

For RCMP Identification Services Use-À l'usage du Service de l'identité judiciaire de la G.R.C.

Note: When this form is used for employment purposes within the RCMP, ensure the individual that the information is collected under the RCMP Act and is used for security-related purposes to determine suitability for service within the force. The provisions of the Privacy Act concerning its access, collection, security, confidentiality and archiving purposes apply. This information is retained in the Civilian Identification, Identification, and ID-10 and ID-11.

RCMP GRC
C-216C (88-12) 7540-21-288-7891

Note: L'individu ou le tiers de la présente formule à des fins d'emploi à la G.R.C., s'assure de garantir que les renseignements sont recueillis en vertu de la Loi sur la G.R.C. et sont utilisés à des fins de sécurité afin de déterminer l'adéquation du candidat dans la G.R.C. Les dispositions de la Loi sur la protection des renseignements personnels s'appliquent en ce qui concerne l'accès, la collecte, l'utilisation, la diffusion, la conservation et la destruction des renseignements. Ces renseignements sont conservés dans les G.R.C. GRC/RCMP-GRC, ID-10 et ID-11.

IMMIGRATION Canada

Chapter PE 13 Holding, Detaining and Seizing Vehicles Operated by Transportation Companies



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Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Holding, Detaining and Seizing Vehicles Operated by Transportation Companies

Abbreviations and Short Forms	
Act	<i>Immigration Act</i> , as amended
IO	Immigration Officer
Minister	Minister of Citizenship and Immigration Canada
POE	Port of Entry
SIO	Senior Immigration Officer

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes the authorities of an immigration officer to hold, detain and seize vehicles operated by transportation companies bringing people to Canada by water, land or air.

For information on searching and seizing private vehicles, see chapter PE 12, *Search, Seizure, Fingerprinting and Photographing*.

1.2 Policy intent

Canadian immigration policy aims for holding, detaining and seizing vehicles operated by transportation companies are to ensure that:

- a transportation company does not remove a vehicle before an officer completes an inspection and examination [A90(1)]

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, subsection 90(1).

- a vehicle does not leave Canada if an officer has reasonable grounds to believe that it was used to commit an offence under A94.1, A94.2 or A94.4 [A102.01]
- a transportation company complies with a direction to post security [A92(4)], and
- a transportation company pays any financial liabilities incurred under the Act and its regulations [A92(5)].

2. HOLDING VEHICLES

As an immigration officer (IO) at a port of entry (POE), you have authority to board and inspect vehicles bringing persons to Canada, providing you can demonstrate that the purpose of your actions was to administer and enforce the Act and its regulations. Your authority extends to and includes your responsibility for undertaking a careful inquiry into the facts of any suspected infraction of the Act or its regulations, and for gathering evidence to support allegations related to infractions.

You have the authority to hold a vehicle bringing a person to Canada until you have completed your inspection and examination [A90(1)]. This could involve searching areas aboard the vehicle where stowaways may be hiding or where travel documents may have been concealed.

Intelligence information, unusual flight patterns by a charter aircraft, or an initial inspection of passengers may lead you to believe that an aircraft warrants special attention. If so, you may hold the vehicle until you have examined all passengers and carefully searched the vehicle for hidden documents or other relevant evidence.

Should an insufficient number of IOs be available at the time or place of a vehicle's arrival to inspect the vehicle, you may hold it while you wait for assistance.

You also have extended powers to search with or without a warrant [A102.02, A102.03]. For further information on searching and seizing private vehicles, see chapter PE 12.

3. DETAINING AND SEIZING VEHICLES

3.1 Seizing a vehicle as forfeit under A102.01 and A102.02

You have the authority under A102.01 to seize a vehicle as forfeit when you have reasonable grounds to believe that the vehicle was used in any manner to commit an offence under A94.1, A94.2 or A94.4. These sections refer to persons who knowingly organize, induce, aid or abet illegal migrants to come into Canada.

Under A102.02 you can seize vehicles and other property with a warrant issued by a justice of the peace. Either you or another peace officer can execute the warrant.

Although the Act directly authorizes you to make the seizure, you should consult the Manager, Transportation Division, Port of Entry Control when you are contemplating a seizure. In exceptional circumstances you should act without consultation if a delay might result in the departure of the vehicle. You should make every attempt to involve the RCMP in A102.01 seizures. You should give notice of seizure to the master or crew member in charge of the vehicle, using a Notice of Seizure of a Vehicle form (IMM 5265; see APPENDIX E of PE 12).

An aircraft on a regularly scheduled flight would be unlikely to be seized under this section. A contravention is dependent on the operator's *knowingly* organizing, inducing, aiding and abetting an offence. If a suspected contravention takes place on a regularly scheduled flight, you should ask the RCMP to investigate. If you are contemplating charges, you must collect evidence with due regard to the protection of evidence (see section 3.2 below). It is prudent to involve the RCMP in the process.

3.2 Protecting evidence

An officer may be required to testify in court that a document collected as evidence has remained unchanged since it came into his or her possession: in other words, that the continuity of evidence has been maintained.

Whenever evidence comes into your possession, you must note the date, time and place on the case file.

To maintain the continuity of evidence for the purposes of prosecution under the Act or Criminal Code, officers must ensure that seized documents are kept in a secure area and handled by a minimum number of persons.

Make a photocopy of the document, and on each page stamp *certified true copy* and write your initials, the time and the date. Complete information on the seizure of documents and protection of evidence can be found in chapter PE 12, section 4.

3.3 Detaining and seizing a vehicle under A92(4)

Under A92(4) the Minister may direct you either to detain a vehicle for up to 48 hours, or to seize a vehicle if a master or a transportation company fails to comply with a direction to post security.

Instrument I-41 gives the following officers the delegated authority to direct you to detain or seize:

- Deputy Minister

3.4 Detaining and seizing a vehicle under A92(5)

- Associate Deputy Minister, Immigration
- Assistant Deputy Minister, Immigration Operations
- Assistant Deputy Minister, Immigration Policy, and
- Director General, Enforcement Branch.

Under Instrument I-48, these additional officers have the delegated authority to direct you to *detain* ships, but not to *seize* ships:

- Director, Port of Entry Control
- Regional Executive Directors and Directors General
- Regional Directors General and Directors of Immigration
- Regional Area Managers, and
- Regional Managers, Port of Entry Operations.

You should contemplate seizure, which can result in the sale of the vehicle after 30 days, only if detaining the vehicle fails to achieve the desired result: that is, the transportation company complies with the direction and pays the security deposit.

A transportation company must comply with your order to detain a vehicle [A92(5.1)]. You should lay charges against a company that takes a vehicle away after you have issued a detention order.

For a transportation company that has not posted a security deposit, the Director General, Enforcement Branch, has the delegated authority on behalf of the Minister to direct you either to detain a vehicle for up to 48 hours, or to seize the vehicle, if the company fails to pay any amount for which it has become liable under the Act [A92(5); Instrument I-41].

Follow the instructions in section 3.3 above if you are contemplating seizure, and if a company takes a vehicle away after you have issued a detention order.

4. THE DIRECTION TO DETAIN OR SEIZE A VEHICLE

The Minister or the Minister's delegate may direct you to detain or seize a vehicle under A92(4) or A92(5). The direction is normally issued as a Direction to Detain or to Seize a Vehicle (form IMM 5268; see APPENDIX A).

The Minister or the delegate then sends the direction to the manager of the Immigration office with jurisdiction over the POE at which the detention or seizure will take place.

5. EXECUTING A DIRECTION

5.1 The role of the POE manager

The POE manager will likely play the central role in any decision to seize under A102.01. The manager should always involve the RCMP before the seizure, unless circumstances dictate fast action. Because prosecution under A94.1 or A94.2 cannot proceed without the consent in writing of the Attorney General or Deputy Attorney General of Canada, the manager must send by facsimile to the Manager, Transportation Division, Port of Entry Control:

- details of the seizure
- the basis for the alleged offence, and
- a copy of the RCMP report.

This information will assist Legal Services in reviewing the merits of the case with prosecutors in the Department of Justice, and in seeking the necessary approvals, where appropriate.

In A92(4) and A92(5) detentions and seizures, the POE manager carries out decisions made by the Minister or the Minister's delegate at National Headquarters or in the region. In the maritime sector, where A92(2) deposits are common, the manager is more likely to be the initiator of ship detentions for non-compliance with a direction to post security.

Because of the size and value of ships and aircraft, the manager must make contingency plans in anticipation of detentions or seizures. Managers should liaise in advance with local airport or port authorities to ensure their co-operation at the appropriate time.

As part of these plans, the manager should investigate the necessary logistical steps he or she will take after a seizure. These will vary according to the type of vehicle, the carrier involved, the facilities and services available on site, and so forth. For example, the manager should be ready to:

- arrange for towing the vehicle to another location
- ensure the security of the vehicle (by contracting a security company, for instance)
- hire a temporary crew to move the vehicle
- safeguard the vehicle's log books, and
- take preventive steps, if necessary, to protect the vehicle from damage in cold weather.

At the time of detention or seizure, the manager should involve the carrier's representative to the greatest extent possible to ensure that the vehicle is handled properly. If the manager is seizing the vehicle, he or she should commission an insurance appraisal to establish the vehicle's value and condition at the beginning of the seizure period.

5.2 The IO's role

You could play the central role in the decision to seize a vehicle under A102.01, and your manager may require you to execute a seizure under A102.02 with a warrant. If you are initiating a seizure under A102.01, you

should first discuss your decision to seize with the most senior immigration official available, unless you are faced with the need to make an on-the-spot decision to prevent a vehicle's leaving Canada. You are responsible for reporting the circumstances under which you seize any vehicle under A102.01 or A102.02 to the Deputy Minister. You should report in writing or by facsimile through the Manager, Transportation Division, Port of Entry Control.

You are normally responsible for executing a direction to detain or seize a vehicle issued under A92(4) or A92(5).

Whichever provision of the Act authorizes the action, you should:

- inform a senior representative of the airport authority (in the case of an aircraft seizure) or port authority (in the case of a vessel seizure) of your intention to detain or seize, and of the specific time and place of detention or seizure
- before the seizure and as soon you identify the specific vehicle to be detained or seized, inform the harbour-master (for a ship) or the control tower (for an aircraft) giving specific details, such as the vehicle identification, (ship's name and registry, or flight number or type of aircraft and registration number), the name of the carrier, the time of detention or seizure, and your authority for detaining or seizing (this notification is necessary so that if the master or transportation company attempts to ignore the direction, the harbour-master or control tower can deny the vehicle permission to leave port or take off)
- give notice to the master of the vehicle you are detaining or seizing and, if applicable, to the transportation company operating the vehicle, using a Notice of Seizure of a Vehicle pursuant to sections 102.01 or 102.02 of the Immigration Act (IMM 5265; see APPENDIX E of PE 12) or a Notice of Detention or Seizure of Vehicle pursuant to Subsections 92(4) or 92(5) of the *Immigration Act* (IMM 5266; see APPENDIX B), and
- in actions under A92(4) or A92(5), give specific instructions to the representative of the carrier operating the vehicle for paying money owed to the department. Acceptable methods of payment are by cheque or money order. You must be ready to accept the money when it is paid, and you must give the representative an Official Receipt (form IMM 410 if the payment is a security deposit required under A92(2); see APPENDIX C). You may also provide the carrier's representative with a Release of Vehicle form (IMM 5271; see APPENDIX D).

5.3 Time and place of detention or seizure

In actions under A92(4) and A92(5), you normally detain or seize a vehicle after the time limit given to the carrier to pay has expired. After consulting the airport or port authority, your POE manager will determine the precise time and place of detention or seizure. If you are detaining for 48 hours, particularly in the maritime sector, for maximum effect you will want to take custody of the vehicle just before its departure from Canada.

5.4 Notice of detention or seizure

You should notify the transportation company in writing of the detention or seizure of a vehicle (as in APPENDIX E of PE 12 and APPENDIX B of this chapter).

Where this is not immediately possible, verbal notification will suffice. However, on the next business day, you should confirm the detention or seizure by delivering written notification to the company in question.

After you detain or seize a vehicle, you should place a warning notice on the vehicle, indicating that it is under detention or seizure by the Minister.

You must give notice of seizure to any person who may have an interest in the vehicle, such as an owner or mortgage-holder [A92(6)]. The SIO at the POE where the seizure takes place is responsible for attempting to establish with the transportation company operating the vehicle — which may be leasing the vehicle from another company or may still owe money on the purchase of the vehicle — of any third-party interest in the property, and to take reasonable steps to give notice of the seizure to that party. The SIO can give notice by providing the third party with a copy of the notice issued to the carrier representative on site.

5.5 Liability for costs

A transportation company is liable for any costs involved in the detention of its vehicle under A92(4) or A92(5) [A92(7)]. Whenever possible, you or the officer supervising the detention should try to have any billings sent directly to the transportation company. When the department has incurred the cost directly, record the liability on a Transportation Company Liability Report (IMM 459) and send the report to the Director, Accounting Operations, Immigration Canada, Ottawa-Hull, K1A 1L1.

6. INVOLVEMENT OF OTHER AUTHORITIES

6.1 Airport and port authorities

When you carry out a direction to detain or seize a vehicle, you will need the co-operation of airport or port authorities:

- to move the vehicle to a holding area for the period of seizure, if necessary, and
- to ensure that the transportation company does not violate the direction. For example, you must inform the control tower that a particular aircraft is under seizure, so that the tower will deny permission for the aircraft to take off if the master or the transportation company decides to ignore the direction.

6.2 The RCMP

Whenever you are making a seizure under A102.01, you should involve the RCMP, unless circumstances make this impossible.

When you detain or seize a vehicle under A92(4) or A92(5) and the transportation company fails to comply with your orders, the RCMP may be asked to investigate the infraction and to lay charges under A97.1(1).

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APPENDIX A

SAMPLE OF IMM 5268 (07-93) B - DIRECTION TO DETAIN OR TO SEIZE A VEHICLE

Employment and Immigration Canada Emploi et Immigration Canada

DIRECTION TO DETAIN OR TO SEIZE A VEHICLE

PURSUANT TO SUBSECTION 92(4) OF THE IMMIGRATION ACT

WHEREAS a direction/direction was/were issued on _____
(date) pursuant to section 92 of the
Immigration Act ("the Act") to _____
(transportation company),

requiring it to remit, by way of cheque, money order or irrevocable standby letter of
credit, the sum of \$ _____ as a security deposit; and

WHEREAS the company has failed to comply with this direction; and
WHEREAS subsection 92(4) of the Act provides that:

"Where a master or transportation company fails to comply with a
direction under subsection 92 (1), (2) or (3), the Minister may
direct an immigration officer
(a) to detain any vehicle of the transportation company
for a period of not more than forty-eight hours; or
(b) to seize and hold any vehicle of the company,
including any vehicle detained pursuant to paragraph
(a)."

I HEREBY direct that, under the authority delegated to me, a vehicle operated by
_____ (transportation company) be
☐ detained pursuant to paragraph 92 (4) (a) of the Act; or
☐ seized pursuant to paragraph 92 (4) (b) of the Act.

This direction remains valid until _____ (date) or
until the transportation company complies with the direction to post security.

Pursuant to section 121 of the Act, an immigration officer is duly authorized to execute this direction on behalf of the Minister; and in the case of seizure, is instructed to comply with the
requirements of subsections 92 (6) and (7).

Issued at _____ (place) _____ on _____ (date)

_____ (name)

IMM 5268 (07-93)B

- 1 - Port Manager
- 2 - Director POEC
- 3 - Issuing Authorities

(français au verso)

Canada

Next page: 13

APPENDIX B

SAMPLE OF IMM 5266 (07-93) B - NOTICE OF DETENTION OR SEIZURE A VEHICLE



Immigration and
Citizenship Canada

Emploi et
Immigration Canada

NOTICE OF DETENTION OR SEIZURE OF VEHICLE

(PURSUANT TO SUBSECTIONS 92 (4) OR (5)
OF THE IMMIGRATION ACT)

AVIS DE RETENUE OU DE SAISIE D'UN VÉHICULE

(EN APPLICATION DU PARAGRAPHE 92 (4) OU (5)
DE LA LOI SUR L'IMMIGRATION)

TO: _____ (Master, captain or other
À: _____ person in charge of the vehicle)
(Responsable du véhicule)

Name or Registration Mark of vehicle
Nom et immatriculation du véhicule _____

Port of Registry (if a ship)

Port d'attache (s'il s'agit d'un navire) _____

PURSUANT to section 92 of the Immigration Act, the vehicle
identified above is hereby

☐ detained for a maximum of 48 hours,
pursuant to ☐ paragraph 92 (4) (a)
☐ paragraph 92 (5) (a)

or
☐ seized,
pursuant to ☐ paragraph 92 (4) (b)
☐ paragraph 92 (5) (b)

To secure the release of this vehicle, _____

(transportation company)

must remit the sum of Cdn \$ _____ being the amount
for which the company was directed to deposit as security or the
amount for which the company has become liable to an
immigration officer at the nearest Canada Immigration Centre.

Please make cheque or money order payable to the Receiver
General for Canada.

The Direction to Detain or to Seize a Vehicle operated by said
transportation company was issued on behalf of the Minister. The
Minister has, in this direction, designated an immigration officer to
exercise and perform all the powers, duties, and functions required to
execute a detention/seizure (delete as appropriate) on behalf of
the Minister.

WARNING: Pursuant to subsection 92 (5.1) of the Immigration
Act, a transportation company which fails to comply with the
orders of an immigration officer enforcing a Direction to Detain or
to Seize a Vehicle pursuant to subsections 92 (4) or (5) of the
Immigration Act may be guilty of an offence under section 97.1 of
the Act, for which a fine not exceeding \$10,000 may be imposed;
or, for a subsequent offence, a fine not exceeding \$50,000 or a
prison term not exceeding six months, or both, may be imposed.

Issued at _____ on _____
Délivré à _____ (place - ville) _____ (date)

(name - nom)

(title - titre)

Copies of this document are to be sent to parties believed to have
a financial interest in the vehicle.

CONFORMÉMENT à l'article 92 de la Loi sur l'immigration, le
véhicule susmentionné est par les présentes

☐ retenu pendant un maximum de 48 heures,
en vertu ☐ du paragraphe 92 (4) ou
☐ du paragraphe 92 (5)

ou
☐ saisi
en vertu ☐ du paragraphe 92 (4) ou
☐ du paragraphe 92 (5)

Pour obtenir restitution de ce véhicule, _____

(nom du transporteur)

doit verser, à l'agent d'immigration au Centre d'immigration
Canada le plus près, le somme de _____ \$ CAN, soit la
caution que le transporteur avait ordre de verser, soit le paiement
dont le transporteur était responsable.

Tout chèque ou mandat doit être établi à l'ordre du Receveur
général du Canada.

L'ordre de saisir ou de retenir un véhicule exploité par ledit
transporteur a été donné au nom du ministre. Dans cet ordre, le
ministre a désigné un agent d'immigration pour exercer, en son
nom, tous les pouvoirs et fonctions nécessaires à son exécution.

AVERTISSEMENT : En application du paragraphe 92 (5.1) de la Loi
sur l'immigration, tout transporteur qui ne se conforme pas aux
ordres d'un agent d'immigration qui exécute un ordre de retenir ou
de saisir un véhicule en application du paragraphe 92 (4) ou (5) de
la Loi sur l'immigration se rend coupable d'une infraction visée à
l'article 97.1 de la Loi, pour laquelle peut être imposée une amende
maximale de 10 000 \$ ou, pour une infraction subséquente, une
amende maximale de 50 000 \$ ou une peine d'emprisonnement
d'au plus six mois, ou bien les deux.

on behalf of the Minister responsible for
enforcing Part V of the Immigration Act
au nom du ministre chargé de l'application
de la partie V de la Loi sur l'immigration

Des copies du présent document doivent être envoyées aux parties
qui auraient un droit sur le véhicule en cause.

IMM 5266 (07-93) B

Carrier 1 Transporteur
NHO POEC 2 CPE AC
CEIC File 3 Dossier CEIC

Canada

3101

Next page: 15

Next page: 17

APPENDIX D
SAMPLE OF IMM 5271 (09-93) B - RELEASE OF VEHICLE



Employment and
Immigration Canada

Emploi et
Immigration Canada

RELEASE OF
VEHICLE

RESTITUTION D'UN
VÉHICULE

Name or registration mark of vehicle
Nom ou immatriculation du véhicule

Port of registry (if a ship)
Port d'attache (dans le cas d'un navire)

WHEREAS

_____ (transportation company) has remitted the sum of \$ _____, being the amount the company was directed to deposit as security or the amount for which the company has become liable, the vehicle identified above is hereby released.

On behalf of the Minister responsible for enforcing Part V of the Immigration Act

ATTENDU QUE

_____ (nom du transporteur) a versé la somme de _____ \$, soit la caution que le transporteur avait ordre de déposer, soit le paiement dont le transporteur était responsable, le véhicule identifié ci-dessus est restitué.

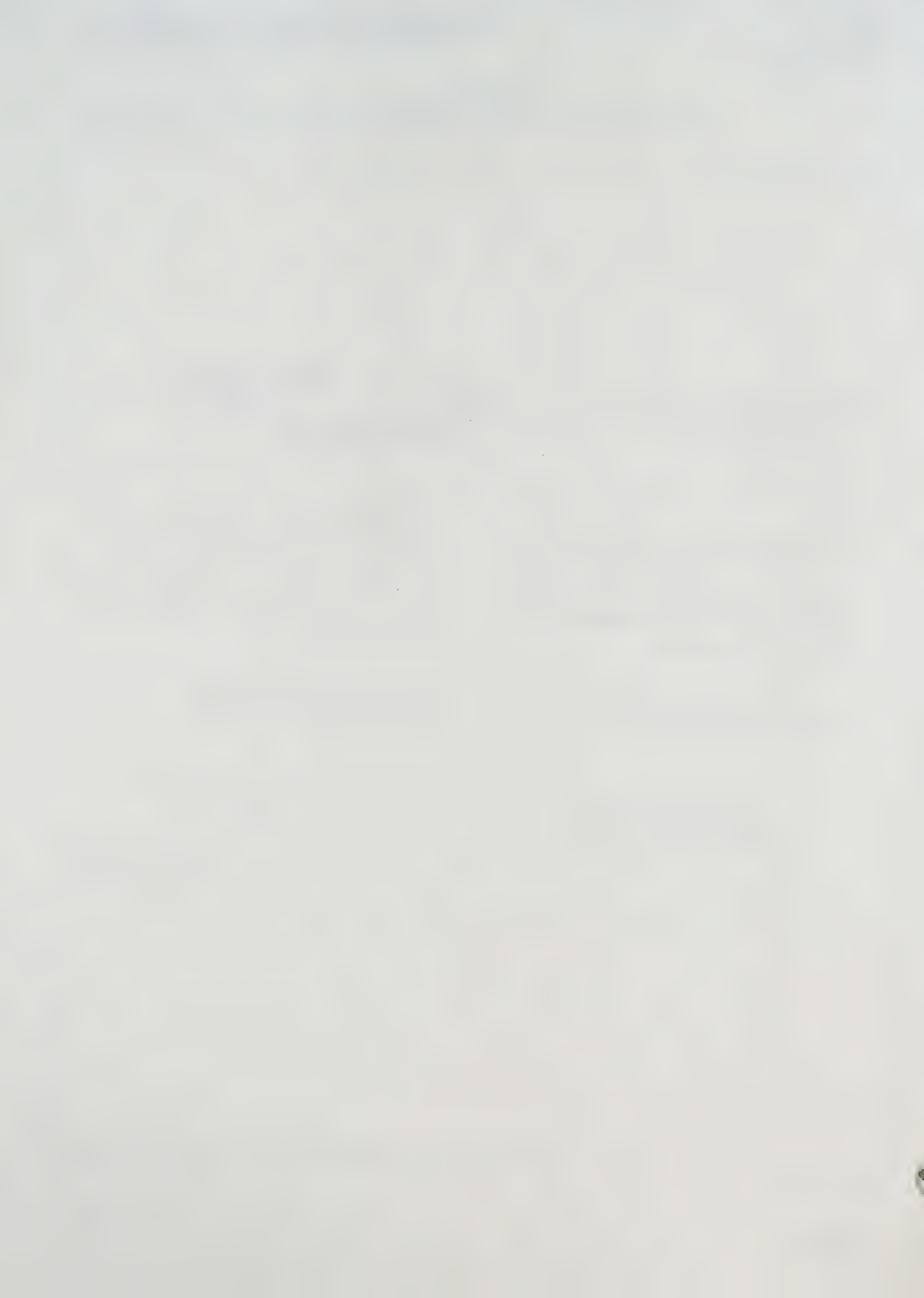
Pour le ministre chargé de l'application de la partie V de la Loi sur l'immigration

Signature of Immigration Officer
(Signature de l'agent d'immigration)

Date

IMM 5271 (09-93) B

Canada



IMMIGRATION

Canada

**Chapter PE 14
Obligations and
Liabilities of
Transportation
Companies**





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Obligations and Liabilities of Transportation Companies

Abbreviations and Short Forms	
Act	<i>Immigration Act</i> , as amended
ALFS	Automated Letter and Form System
CIC	Citizenship and Immigration Canada
FOSS	Field Operational Support System
IO	Immigration Officer
Minister	Minister of Citizenship and Immigration Canada
MOU	Memorandum of Understanding
POE	Port of Entry
SIO	Senior Immigration Officer

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how an immigration officer at a port of entry notifies transportation companies of their obligations and liabilities when they carry improperly documented passengers seeking to come into Canada, recommends the imposition of fees on carriers presenting inadequately documented passengers, and lays charges against carriers violating the *Immigration Act*.

1.2 Policy intent

Canadian immigration policy aims for establishing the obligations and liabilities of transportation companies are:

- to ensure that transportation companies fulfil their role of facilitating and controlling travellers across international boundaries in a way that serves the best interests of Canada, and
- to ensure that transportation companies take some responsibility for transporting inadmissible persons to ports of entry in Canada.

2. OBLIGATIONS AND LIABILITIES OF TRANSPORTATION COMPANIES

As an immigration officer (IO) examining persons at a port of entry (POE), you should be aware of the obligations of transportation companies (carriers) that carry persons seeking to come into Canada, and the financial liabilities that carriers may incur. Part V of the Act describes the obligations of transportation companies, and applies to air, maritime and land carriers (A85 to A93.1 inclusive).

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, sections 85 through 93.1.

Because of the special requirements for handling maritime carriers, maritime procedures appear separately in chapter PE 11.

Under the Act and its regulations, carriers have several obligations, including:

- presenting the persons whom they carry for immigration examination
- ensuring that those persons are properly documented to enter Canada
- providing conveyance for persons who have been ordered removed
- paying administration fees, medical costs and removal costs for certain classes of inadmissible persons
- complying with directions to post security as a guarantee of payment of liabilities incurred under the Act
- providing crew lists and notifying IO's of crew changes, and
- providing, equipping and maintaining adequate facilities at POEs for interviewing, detaining and removing inadmissible persons.

2.1 Presenting persons for examination

A transportation company bringing persons to Canada must present those persons to you for examination (A89(1)). The carrier must ensure that no person leaves the vehicle other than at a place designated by a senior immigration officer (SIO), until the SIO grants permission.

2.2 Complying with a ministerial direction not to carry

Section 50(2) of the *Immigration Regulations* obliges a transportation company not to carry a person who, in the opinion of the Minister, is a member of any of the inadmissible classes described in A19(1). The authority to inform a company not to carry such a person has been delegated, under I-34, to senior managers at NHQ and to immigration program managers overseas.

2.3 Ensuring that persons are properly documented

2.3.1. Screening documents

A transportation company must ensure that the persons it brings to Canada are in possession of all requisite travel documents (A89.1(1)), whether the documents are in the personal possession of the passenger, or

held by the carrier in accordance with s. 50.1 of the *Immigration Regulations*. The carrier's responsibility begins at the final embarkation point before arriving in Canada, and ends when the person is presented to you for examination at the POE (A89.1(2)). In accordance with a ruling by the Court of Appeal for Ontario in a case involving Lufthansa German Airlines, presentation must take place within the terminal building.

You should keep in mind that the transportation company's representatives responsible for document screening are not required to make decisions about admissibility or to be able to determine intention. "Properly documented" means:

- a valid and subsisting passport or other travel document under s. 14 of the *Immigration Regulations*, and
- a valid and subsisting visa, if required.

For a person who is exempt from the need for travel documents under s. 14(4) of the *Immigration Regulations* — primarily citizens and permanent residents of the U.S. — "properly documented" means that the person is able to provide sufficient documentary evidence to satisfy you under s. 14(6) of the *Immigration Regulations* that the person is able to return to the country from which he or she seeks entry, or to go from Canada to some other country.

2.3.2. Undocumented arrivals

Travel documents regularly disappear between the check-in desk at the final point of embarkation and arrival in Canada. The person concerned may have concealed the documents in his or her clothing or in hand luggage, disposed of the documents while he or she was on board the vehicle, or recycled the documents by returning them to a smuggler before he or she boarded the vehicle or to a courier travelling on board the same vehicle.

You can help to address the problem of undocumented arrivals by:

- targeting vehicles operating on problematic routes for disembarkation checks, and searching the vehicle for evidence of concealed or destroyed documents, and
- using your authority under A110(2) to search for, and seize, concealed travel documents.

Similarly transportation companies can help by:

- carrying out a second document check (a gate check) as persons board the vehicle at its final embarkation point, and
- exercising their authority under s. 50.1 of the *Immigration Regulations* to hold travel documents selectively.

2.3.3. Holding travel documents

Section 50.1(1) of the *Immigration Regulations* authorizes a transportation company to hold a person's travel documents. The department advises carriers to use this authority with discretion for cases where the documents appear completely bona fide but, based on a pattern of illegal migration movements through a particular embarkation point, there is a significant risk that the individual may dispose of the documents prior to arrival in Canada.

When it takes possession of travel documents, the carrier must issue the person a receipt in a form approved by the Minister. The approved elements are:

- the name of the passenger

2.4 Providing identity or itinerary information

- the type of document received
- the serial number of the document
- the document's country of issue
- the flight number, or name of the vessel, or the bus or train route or number
- the place the document was received: that is, the embarkation point
- the signature of the carrier's representative, and
- the signature of the passenger.

At the time the carrier presents the person to you for examination on arrival in Canada, the carrier must deliver the documents and a copy of the receipt to you (*Immigration Regulations*, s. 50.1(2)).

You have the authority to ask the carrier to provide certain information if investigation is necessary to establish the identity or travel itinerary of a recently arrived undocumented passenger (*Immigration Regulations*, s. 50.1(3)). In such cases, you must try to obtain:

- a copy of the person's ticket voucher
- information related to the person's travel itinerary, including the country of embarkation and dates of travel, and
- information specifying the type of travel or identity document carried by the person, the country of issue and number of the document, and the name of the person to whom the document was issued.

You should not expect the carrier to provide information that is not captured in the normal course of its business: for example, in its reservation system.

The carrier must provide you with the information as soon as possible, and no later than 72 hours after you make your request, unless you authorize otherwise. You can authorize an extension of another seven days. (*Immigration Regulations*, s. 50.1(3)).

2.5 Liability for administration fees

2.5.1. Criteria

In certain circumstances, it is your responsibility to recommend that a carrier which presents an inadequately documented person at your POE be assessed an administration fee. For procedures on recommending an assessment, see section 3. below.

Assessing an administration fee is a way of partly recovering the costs incurred when inadequately-documented persons are conveyed to Canada or when crew members remain in Canada in contravention of the Act or regulations. The administration-fee approach focuses attention on those inadequately-documented persons who represent a significant cost to Canada. The fee applies generally to:

- inadmissible persons who are inadequately-documented, with certain exceptions described in s. 42.2 of the *Immigration Regulations*
- persons reported under A27(2)(f) as having eluded examination (A91.1(1)(a)), and

- crew members who cease to be visitors (A91.1(1)(b)).

If you decide to admit, exclude, or allow a person to withdraw, the department does not assess an administration fee. The rationale is that where there is no significant cost to Canada, there is no cost to the carrier. For examples of costs partially offset by the administration fee, see the definition of "administration fee" in s. 2(1) of the *Immigration Regulations*.

2.5.2. Amount of the fee

The amount of the administration fee is prescribed in Schedule IX of the *Immigration Regulations*.

2.5.3. Fee reductions through memoranda of understanding

Carriers can reduce their financial liability for administration fees by entering into a memorandum of understanding (MOU) with the department. The MOU is an undertaking of good faith between the two parties. The carrier agrees to incorporate into its document-screening procedures certain elements that are known to increase interdiction capability, such as using trained document-screening personnel, doing gate checks, and selectively holding documents. The department undertakes to support the carrier through measures such as training carrier personnel in Canadian documentary requirements, fraud detection and fraud prevention. If the carrier is successful in attaining performance standards set by the terms of the MOU, it can earn reductions in the amount of the administration fee.

Section 42.3 of the *Immigration Regulations* specifies the criteria for MOUs and the formula for reducing the amount of the administration fee where the carrier is able to achieve performance standards established in MOUs. The dollar amount of the fee is prescribed in Schedule IX of the *Immigration Regulations*.

2.6 Liability for detention costs

Carriers have no direct liability for detention costs in respect of persons conveyed to Canada since amendments to the Act under Bill C-86 came into force on February 1, 1993. The administration fees for which carriers became liable after that date are used to offset a portion of the total average cost of items such as detention. However, carriers do remain liable for the detention costs of persons who they brought to Canada prior to February 1, 1993, including costs incurred after that date. Furthermore, carriers are liable for the cost of overnight detentions arising from the need to provide accommodation to persons during their removal from Canada. Such costs are to be categorized as removal costs, pursuant to R42.(b). You must record these costs, as well as all detention costs arising from pre-C-86 cases, on a Record of Transportation Company Liability form (IMM 459; see APPENDIX A).

2.7 Liability for medical costs

2.7.1. Criteria

If a person whom a carrier transported to Canada requires medical treatment, either pending his admission or pending his leaving Canada where admission has not yet been granted, a carrier may be liable, under A91, for the medical costs of the person in the following circumstances:

- if you referred the person for medical treatment under A91(1) and the person did not have a valid and subsisting visa, and

<p>2.7.2. Recovering medical costs from carriers</p>	<ul style="list-style-type: none"> • if the person's condition was a result of negligence by the transportation company, regardless of whether or not the person had a valid and subsisting visa. <p>Once you have established liability, the carrier's liability continues until the person no longer requires medical treatment in Canada. The carrier is liable until the person recovers, dies or leaves Canada.</p> <p>If the person is a member of a crew of a vehicle, the carrier is liable for all medical costs or hospitalization as well as costs incurred with respect to departure from Canada of that person under all circumstances, whether the need for treatment was identified before or after admission (A91(4)).</p>
<p>2.8 Obligations and liabilities for removals</p>	<p>You should always attempt to arrange for the carrier to be billed directly by the doctor or institution providing the medical treatment. If the department has paid the costs, you must report them on a Record of Transportation Company Liability form (IMM 459). When you or another IO have concluded the case and recorded all recoverable costs on the IMM 459, the officer concerned must send the completed form to the Director, Accounting Operations, Citizenship and Immigration Canada (CIC), Ottawa, K1A 1L1, so that the carrier will be billed.</p>
<p>2.8.1. Obligation to convey</p>	<p>Transportation companies have an obligation to convey any inadmissible persons they transported to Canada and who are ordered removed, and a liability to pay for the cost in some circumstances.</p> <p>If a person whom a carrier brought to Canada is ordered removed from Canada, the carrier must convey that person if the Minister requires it to do so (A85(1)), regardless of the circumstances or the documentation presented by the person. When there is an obligation to convey, you must notify the carrier with a Notice of Liability to Convey and/or Pay Removal Costs (form IMM 1216; see APPENDIX F of PE 9).</p> <p>The IO arranging the removal must offer the carrier that brought the person to Canada the opportunity to provide conveyance. If the carrier is unable to do so or is not prompt in making these arrangements, the IO must make arrangements with another carrier to effect the removal (A87). The liable carrier must reimburse the cost of removal.</p>
<p>2.8.2. Obligation to pay removal costs</p>	<p>A carrier must pay the costs of removal of any person whom it is required to convey under A85(1), provided that an IO did not grant admission to the person and the person was not in possession of a valid and subsisting visa on arrival in Canada (A85(3)).</p> <p>It is the responsibility of the Crown to pay the costs of removing a person whom an IO has admitted to Canada, or an inadmissible person who was in possession of a valid and subsisting visa on arrival (A85(4)). The obligation to provide conveyance remains with the carrier, however.</p> <p>If the department had to make arrangements with another carrier to provide conveyance, the carrier that originally brought the person to Canada must reimburse the Crown for the costs of the removal (A87(3)).</p>

2.8.3. Determining removal costs

If the person being removed was conveyed to Canada as or to become a member of a crew, the carrier has the obligation not only to arrange transportation but also to pay all removal costs, regardless of the circumstances (A86).

Section 42 of the *Immigration Regulations* prescribes the costs and expenses that the IO arranging the removal should include when determining removal costs. They include:

- expenses incurred by the department within or outside Canada for the transportation of the person removed from Canada
- accommodation costs incurred by the department during the removal of the person from Canada, and
- accommodation and travel expenses incurred by an escort provided for the person removed from Canada.

2.8.4. Recovering removal costs from carriers

Effective August 1, 1993, Accounting Operations at National Headquarters assumed responsibility for all invoicing, accounting and collection procedures related to removal costs.

The IO arranging the removal must record any amounts to be recovered from the transportation company on a Record of Transportation Company Liability form (IMM 459). Send the IMM 459 to the Director, Accounting Operations, CIC, Ottawa/Hull, K1A 1L1.

2.9 Obligation to detain a person on board a vehicle

A transportation company must comply with your order, issued under A90(2), to detain and guard safely on board a vehicle any person who arrived in Canada on that vehicle, and:

- who is not seeking admission to Canada
- whom you have allowed to leave Canada under A20(1), A23(4) or A23(4.2), or
- who is required to leave Canada under a rejection order.

You are most likely to issue such an order in the maritime sector: for example, a stowaway who is not seeking admission to Canada, or family members travelling with a crew member who lack a required visa and are denied admission. In other transportation sectors you might, for example, issue an order when there are valid reasons for not permitting passengers to disembark from an aircraft that has landed unexpectedly in Canada for emergency reasons and is expected to be on the ground for a short time.

3. PRESENTING INADEQUATELY DOCUMENTED PERSONS IN VIOLATION OF A89.1

3.1 Port-of-entry procedures

When you are completing your entry on the Field Operational Support System (FOSS) screen *SE1093 — Section (20) Report*, you **must** complete the *Transportation Violation* field whenever the subject of the report was inadequately documented and was brought to Canada by a transportation company. This is the only way National Headquarters can track a carrier's record as part of monitoring the carrier's compliance with its MOU. You **must** complete the *Transportation Violation* field even if the carrier is unknown, selecting the appropriate code for *Unknown*.

3.1.1. Notifying the carrier

You should notify a carrier *each time* it carries an inadequately documented person to Canada, regardless of whether or not the case is likely to result in the assessment of an administration fee. To advise airlines, use a Carrier Notification of a Violation of Section 89.1 form (IMM 5244; see APPENDIX B). You may use the version of the form generated by the Automated Letter and Form System (ALFS). Deliver it to a carrier representative on site — usually the station manager — as soon as possible after the arrival of the vehicle, and certainly within 24 hours.

If you act quickly, the carrier can take remedial action at the point of embarkation before information on the individual is purged from its reservation system. Give carriers as much helpful information as possible, including a copy of the passenger's ticket. Because of privacy considerations, you must *not* give the carrier a copy of the Recommendation for Administration Fee form (IMM 5161; see APPENDIX C) or the passenger's Declaration form (IMM 5160; see APPENDIX D). To assist the carrier, however, you may provide a verbal reiteration of any information that the passenger provided concerning the carrier's document-screening practices overseas, or lack thereof.

You do not need to send a copy of the IMM 5244 to National Headquarters. Keep a copy on file at your Immigration office for at least six months, in case of an inquiry from the carrier or in case it is required as evidence in a court case.

3.1.2. Recommending the imposition of an administration fee

If the improperly documented person is a member of an inadmissible class described in s. 42.2 of the *Immigration Regulations*, you must complete an IMM 5161. The form can be generated by ALFS. Complete the IMM 5161 whenever the person meets the criteria for an administration fee, even if you are unable to determine which carrier transported the person. This will protect the integrity of immigration data. Record such a case as *Unknown carrier*.

Complete a separate IMM 5161 form for every inadequately-documented person, including every inadequately-documented child, conveyed by a transportation company to a Canadian POE, *except* in the following cases:

- if the person is admitted to Canada under A19(3) or A23(2), or A22, or

- if the person is issued a Minister's permit under A37(1)(a) before the opening of an inquiry, or
- if you allow the person to withdraw immediately, under A20(1)(b), A23(4) or A23(4.2)(b), provided that the person does actually leave, or
- if the person is the subject of an exclusion order made by an SIO under A23(4), provided that the person does actually leave.

In practical terms, this means that you must complete an IMM 5161 form for all persons who:

- are inadequately documented, *and*
- are the subject of an inquiry or a refugee determination process.

You must also complete an IMM 5161:

- if a transportation company carried the person despite a specific direction not to carry issued under s. 50(2) of the *Immigration Regulations*, or
- if the person has been reported under A27(2)(f) as having eluded examination.

If an IMM 5161 is completed because the company carried a person in contravention of R50(2), please include a copy of the direction under R50(2) issued to the carrier.

Administration fees also apply in the cases of stowaways and crew members:

- **stowaways:** a carrier that conveys a stowaway is assessed an administration fee except in the unlikely event that the stowaway was properly documented for travel to Canada. Although the department acknowledges that transportation companies cannot screen the documents of persons who board vehicles undetected, carriers are obliged to ensure that unauthorized persons do not gain access to vehicles or are detected and removed from vehicles before departure for Canada. Report inadequately—documented stowaways on an IMM 5161, and follow the procedures that you use for all cases of inadequately—documented arrivals.
- **crew members:** under A91.1(1)(b), the carrier is liable for the fee whenever a crew member is reported as a deserter, fails to report for duty after being admitted to Canada to join a vehicle as a crew member, or ceases to be a visitor for any other reason prescribed under R12. The fee is assessed when you forward a completed Notification of Desertion form (IMM 202) to the Chief, Transportation Violations, Port of Entry Control at National Headquarters. Do **not** use the IMM 5161 form for crew members.

Complete form IMM 5161 for each improperly—documented passenger in respect of whom a preliminary assessment of an administration fee may be made against a transportation company as described in R42.2(1). If you are aware of extenuating circumstances, indicate this in the space reserved for remarks (box 17) on the form.

3.1.3. Special measures for undocumented arrivals

In an effort to identify the carrier of undocumented persons, you should:

- carry out disembarkation checks as frequently as possible on known problem routes (see section 2.3.2.), ensuring that copies of all disembarkation screening reports are sent to the Transportation Division, POEC

- search vehicles whenever possible to retrieve documents that have been concealed or destroyed on board, and
- search the individual's person and hand baggage for concealed documents.

For further information on searching persons at POEs, see chapter PE 12. You are looking for:

- travel documents on a person claiming to have no documents
- genuine documents on a person who has presented fraudulent, altered or borrowed documents on arrival, and
- any evidence that links the individual to a specific carrier, such as airline tickets (see section 2.4)

You should record the fact that you carried out a search or a disembarkation check on an IMM 5161 and forward a copy of the search or disembarkation form to NHQ.

The following items also serve to link the undocumented passenger to the carrier.

- tickets
- flight passenger manifest
- boarding passes
- baggage tags, duty free bags or paper napkins with the airline logo
- the passenger's declaration
- an airline print-out of the passenger's individual travel itinerary
- a witness statement from a member of the crew, from you or another IO, or from any responsible person who can testify to having seen the person concerned on or leaving the vehicle.

It is vital to provide copies of any or all of these items of evidence to NHQ as well as keeping a copy in the case file so that the IO arranging removal at some time in the future has sufficient evidence to hold the carrier liable for the cost of removal. When a passenger arrives undocumented and there is no link to a carrier established, NHQ cannot assess an administration fee on the basis of the completed IMM 5161 alone. Supporting documentary evidence is required. If you cannot establish which carrier transported the person, you should, nevertheless, forward form IMM 5161, indicating that the carrier is **unknown**.

Legal liability for any costs associated with a particular person rests with the carrier actually operating the vehicle when it arrives in Canada, regardless of which carrier sold the ticket. You should not assume that the carrier name on the ticket stock is an indication of liability, because borrowed or leased equipment and various joint-venture arrangements are common in the transportation industry. It is common, for example, for small airlines to operate connector service to major carrier hubs, where the flight number, ticket stock and boarding passes all bear the name of the major carrier rather than the name of the operating carrier. You should attempt to determine which company is actually *operating* the service, and record on the IMM 5161 both the name of the carrier that actually operated the flight (the connector carrier) and the major hub carrier.

Some airline carriers operate under code-sharing arrangements – that is, where two or more carriers share space on one aircraft and the flight operates under two flight numbers. In such cases, you must record on the

IMM 5161 form both the name of the carrier that actually operated the flight, and the name of the code-share partner: that is, the carrier whose code letters appear in the itinerary portion of the ticket before the flight number for the final leg of the journey to Canada.

In the case of an undocumented arrival or a person presenting fraudulent, altered or borrowed documents, you should always ask the person to make a passenger's declaration (IMM 5160) attesting to his or her identity and how the person travelled to Canada. For reasons of privacy, you should *never* give carriers a completed copy of this form. You may share anecdotal information provided by the passenger that would be helpful to the carrier in taking remedial action: for example, the fact that the carrier failed to do a gate check, that there was an exchange of documents in the departure lounge, or that the carrier issued a boarding pass without examining travel documents. **Ask the carrier that transported the passenger for a copy of the passenger manifest. If the passenger's known alias appears on the manifest, carrier liability has been established for our purposes.**

When possible, have a representative of the airline concerned sign a Confirmation by Transportation Company Regarding Passengers Carried (IMM 1445; see APPENDIX E).

3.2 Procedures at NHQ

When the Transportation Violations Unit, Port of Entry Control, receives your completed IMM 5161, an assessment officer is responsible for judging the quality of evidence and making the decision to assess an administration fee against the carrier. The officer reviews your recommendation and the evidence presented, and prepares a Preliminary Notice of Assessment to be sent to the carrier on behalf of the Minister (A91.1(2)). The amount of the fee is governed by Schedule IX of the *Immigration Regulations*, and by any MOU that may be in effect under s. 42.2 of the *Immigration Regulations*.

The carrier has 30 days in which to make a submission to the Minister, arguing against the imposition of the fee. If the carrier files a submission, an officer reviews the submission. The officer reviewing the submission is never the same one who made the initial assessment. The reviewing officer's recommendation is then reviewed by the Chief, Transportation Violations. The chief makes the ultimate decision on behalf of the Minister whether to confirm, vary or rescind the preliminary assessment and the company is then given notice of final assessment (A91.1(3)).

4. SECURITY DEPOSITS

Because you may be involved in delivering or enforcing a direction to post security, you should be aware of the requirements of the Act and its regulations for security deposits. Section 92 of the Act authorizes the Deputy Minister to require carriers, or their agents, to post cash security as a guarantee that any liabilities incurred under the Act will be paid. These liabilities are generally administration fees, removal costs and medical costs.

4.1 Forms of security

Section 92 of the Act indicates that security deposits should be in cash or as otherwise prescribed in regulations. Section 25(1) of the *Immigration Regulations* prescribes alternate forms of security that the Deputy Minister may authorize, at his or her discretion. They are:

- an irrevocable, revolving standby letter of credit, drawn in favour of the Government of Canada, issued or confirmed by a bank operating in Canada, or
- a written undertaking from the carrier in conjunction with an irrevocable line of credit with a bank operating in Canada (this form of security is unlikely to be accepted unless accompanied by some cash).

4.2 General security deposits

Security deposited under A92(1) applies to liabilities incurred in respect of any vehicle operated by a carrier. Air carriers regularly doing business in Canada must normally post general security. Some shipping companies providing regularly-scheduled liner service to Canada may also have general security on deposit. For up-to-date information on which carriers have general security deposits, contact the Chief, Transportation Violations.

4.3 Special purpose security

If a carrier does not have a general security deposit, an SIO has the delegated authority to direct a carrier to post special purpose security in respect of a specific vehicle or individual (A92(2); Instrument I-40).

Most airlines have general security on deposit and, therefore, the authority to direct the posting of special purpose security is not often used in this transportation sector. Special purpose security is more widely used in the maritime sector (for further information, see chapter PE 11). An SIO should seek guidance from the Manager, Transportation Division, Port of Entry Control, before issuing a direction under A92(2) to air or land carriers.

If an SIO considers special purpose security to be necessary, the SIO should issue an instruction to the carrier. The amount of cash security deposits under A92(2) is established by the Transportation Division, POEC. The SIO must give the carrier the original copy of the official receipt (IMM 410; see APPENDIX C of PE 13) for any money received, distribute the copies as indicated, and write the official receipt number and case file number on a Record of Transportation Liability form (IMM 459).

4.4 Additional security

The Director, Port of Entry Control has the delegated authority to direct carriers to post additional security, if considered necessary (A92(3); Instrument I-21). The director may vary the types of security required (for example: part cash and part letter of credit).

5. COMPLIANCE ACTION FOR UNPAID FINANCIAL LIABILITIES OR SECURITY DEPOSITS

If a carrier refuses to comply with a direction to post security and if no security has been deposited to pay outstanding liabilities such as administration fees or removal costs, the department can enforce compliance in several ways. The responsibility for initiating compliance action rests with regional managers, the Director, Port of Entry Control or the Director General, Enforcement Branch, depending on the method used.

5.1 Collecting unpaid liabilities

If no security has been deposited from which liabilities can be deducted, the department has two options for ensuring collection of unpaid liabilities:

- **by detaining a vehicle:** the Director General, Enforcement Branch, has the delegated authority on behalf of the Minister to direct you to detain any vehicle of the transportation company for a period of up to 48 hours (A92(5)(a); Instrument I-41). This detention is not a formal seizure, but simply a refusal to allow the vehicle to leave until the company makes satisfactory payment arrangements.
- **by seizing a vehicle:** the Director General, Enforcement Branch, has the delegated authority on behalf of the Minister to direct you to seize a vehicle (A92(5)(b); Instrument I-41). Because seizure can result in the sale of the vehicle after 30 days if the amount remains unpaid (A92(7)(b)), the department is unlikely to exercise this option unless detaining the vehicle failed to achieve positive results.

5.2 Collecting unpaid security deposits

The department has three options for collecting unpaid security deposits if a carrier has failed to comply with a direction to post security:

- **by registering a certificate:** the Director General, Enforcement Branch has the delegated authority to certify on behalf of the Minister that the carrier has failed to comply with a direction to post security (A92.1; Instrument I-49). When registered with the Federal Court, the certificate has the same effect as if it were a Federal Court judgement. This means that a sheriff can execute the judgement against assets of the company for the amount of the debt.
- **by detaining a vehicle:** the Director General, Enforcement Branch, has the delegated authority on behalf of the Minister to direct you to detain any vehicle of the transportation company for a period of up to 48 hours, or until the company complies with a direction to deposit security (A92(4)(a); Instrument I-41). If the carrier is a shipping company, the Minister has further delegated the authority to detain a vessel to regional management, down to and including the manager of port-of-entry operations (Instrument I-48). Please note that the further delegation applies only to *detaining*, not *seizing* vessels.
- **by seizing a vehicle:** the Director General, Enforcement Branch, has the delegated authority on behalf of the Minister to direct you to seize a vehicle (A92(4)(b); Instrument I-41). Because seizure can result in

5.3 Costs accruing to the carrier

the sale of the vehicle after 30 days if the amount remains unpaid (A92(7)(b)), the department is unlikely to exercise this option unless detaining the vehicle failed to achieve positive results.

Any costs associated with the registration of certificates become the liability of the carrier (A92.1(3)). The department can recover the costs as if they were part of the original certificate.

Any costs associated with the detention of a vehicle become the liability of the carrier (A92.1(7.1)). If you are involved in a detention, and the department has paid the costs, you should report them on a Transportation Company Liability Report form (IMM 459) so that the department can recover the costs from the carrier. Send the completed form to the Director, Accounting Operations, CIC, Ottawa/Hull, K1A 1L1.

For further information on detaining and seizing vehicles, see chapter PE 13.

6. CREW MEMBERS

Transportation companies have a variety of obligations and liabilities related to crew members. A crew member is a person, including a master, who is employed on a vehicle to perform duties during a voyage or trip related to the operation of the vehicle or the provision of services to passengers (A2(1)). Subsection 12.1(2) of the *Immigration Regulations* defines who is *not* a crew member.

The following information in this section includes provisions that are generally applicable to all transportation sectors. For specific information about crew members in the maritime sector, see chapter PE 11.

6.1 Status of crew members

Persons who enter Canada as crew members or to become crew members of a foreign-registered vehicle seek entry as visitors to engage in employment. Paragraph 26(1)(c.1) of the Act defines the point at which a crew member ceases to be a visitor and therefore loses legal status in Canada.

6.2 Document exemptions for crew members

Crew members do not require:

- **visitor visas**, provided that they are seeking entry on the vehicle on which they are employed, or to join the vehicle already in Canada. Normal visa requirements apply to off-duty crew members seeking entry for purposes unrelated to their employment.
- **passports**, provided that the crew members are in possession of professional accreditation documents, such as a seaman's identity document issued under International Labour Organization conventions, or an airline flight crew licence or crew member certificate issued in accordance with International Civil Aviation Organization specifications (*Immigration Regulations*, s. 14(4)(f)).
- **employment authorizations**, provided the vehicle is registered outside Canada. Persons who are employed as crew members on vehicles registered in Canada and who are neither Canadian citizens nor permanent residents require employment authorizations (*Immigration Regulations*, s. 19(1)(e)).

6.3 Obligation to report desertions and other circumstances affecting a crew member's status

Under s. 54(1) of the *Immigration Regulations*, the master of a vehicle must notify an IO when any crew member other than a Canadian citizen or permanent resident:

- deserts
- is hospitalized
- fails to rejoin the vehicle after a period of shore leave, or
- has ceased for any other reason to perform the person's duties as a member of the crew: for example, if the person has been discharged, has quit, is to be repatriated, or if the vehicle is inoperable for any reason.

- fails to rejoin the vehicle after a period of shore leave, or
- has ceased for any other reason to perform the person's duties as a member of the crew: for example, if the person has been discharged, has quit, is to be repatriated, or if the vehicle is inoperable for any reason.

You have the authority to require the notification to be in writing, if you consider it necessary. When a master notifies you of a desertion, you must always ask the master to provide a written report on a Notice of Desertion (form IMM 202), or to sign it after you have completed it. A master does not need to inform you of the desertion, discharge or hospitalization of a person who is a Canadian citizen or permanent resident.

7. OBLIGATION TO PROVIDE FACILITIES

Transportation companies are obliged to provide, equip and maintain facilities at POEs, if the Minister requires the facilities for interviewing, examining or detaining persons brought to Canada or to be removed from Canada (A89(2)). In this context the definition of "transportation company" includes the operators of bridges and tunnels, and designated airport authorities (A2(1)).

The Minister may also:

- require a transportation company to make improvements to the facility and to post signs appropriate for its operation or safe use (A89(3))
- continue to use the facility for as long as required (A89(3)), and
- require a transportation company to undertake construction or repairs to render the facility adequate for its purpose and, if the transportation company refuses, to contract the work and recover the costs from the transportation company (A89(4)).

Any dispute over the adequacy of the facility may be resolved by arbitration under the *Commercial Arbitration Act* (A89(6)).

8. OFFENCES AND PUNISHMENT

There are 21 possible offences that transportation companies might commit under the Act and its regulations, all of which are punishable by criminal prosecution (see section 8.3 below). You must consider laying charges whenever it appears likely that the high evidentiary requirements of criminal prosecution could be met, and if you have reason to believe that a contravention was committed as a result of negligence on the part of the carrier. You should reach your decision in consultation with the local RCMP. For some offences you must consult National Headquarters before proceeding to lay charges.

8.1 Reporting offences

Whether or not you lay charges, you must report all offences to the carrier and to the Transportation Division, POEC, National Headquarters.

8.1.1. Violations of A89.1

You must report all airline violations of A89.1 (for presenting improperly—documented persons), whether or not you recommend that an administration fee be levied, on the Carrier Notification of a Violation of Section 89.1 form (IMM 5244; see APPENDIX B). Deliver the original to the carrier representative on site as soon as possible after the violation occurs. The notification provides rapid feedback to the carrier, enabling it to take corrective action at the point of embarkation while information on the passenger is still in the reservation system. Airlines usually archive reservation information after 24 hours. Keep a copy on file in your Immigration office for six months, in case it is required for evidence. It is not necessary to send a copy of the IMM 5244 to National Headquarters.

It is essential that you also record the violation in the *Transportation Violation* field on FOSS screen SE1093 — *Section (20) Report*.

8.1.2. Other violations

Whether or not prosecution action is planned, you must report all violations other than those of A89.1 on the Notice of Contravention of the *Immigration Act* or Regulations by a Transportation Company form (IMM 5248; see APPENDIX F). Deliver the original of the form to the transportation company representative on site, with copies to the local RCMP and to the Manager, Transportation Division, POEC.

Headquarters officers will use the information to monitor transportation company compliance with the Act and its regulations, and to generate management information. You should keep a copy in your Immigration office's files for six months, together with any evidence on the violation. If there is any possibility of prosecution, you must observe the basic rules of continuity of evidence.

8.2 Continuity of evidence

An officer may be required to testify in court that a document collected as evidence has remained unchanged since it came into his or her possession. Whenever evidence comes into your possession, you must note the date, time and place on the case file.

Make a photocopy of the document, and on each page stamp *certified true copy* and write your initials, the time and the date. Retain the photocopy on file in a secure area, preferably a locked safe with limited access.

On the document itself, write the file number, exhibit number, your initials, the time and the date: for example, on the upper left or right corner inside the front or back cover of a passport, or on an upper corner of a document without obscuring evidence. If the document is a *genuine* passport or other travel document, do not write on the document itself, but place it in its own envelope and write your notations across the seal.

Seal the evidence in an envelope, write your initials across the envelope seal and secure it with transparent tape. Write a description of the envelope's contents, your initials, the time and the date on the envelope.

If an authorized officer needs to remove evidence from the envelope for examination, he or she must repeat the steps just described above. If an investigator only needs to refer to a document, he or she should refer to the certified true copy on file.

If a police officer wishes to take possession of the document from the immigration file, the police officer should:

- open the envelope in the presence of the IO who originally placed the document in the envelope, verify the contents of the envelope with the certified true copy, and write his or her initials, the time and the date on the certified true copy
- provide a receipt (including the police officer's signature and regimental number) to the IO, who should place the receipt in the immigration case file, and
- on taking possession of the document, write his or her initials, the time and the date on document in the same manner as the original IO.

You should make a note of these procedures and place the note on file for future reference.

8.3 When to lay charges

In the event of prosecution, A97.1 sets out various levels of transportation company offences and penalties.

Violations prosecuted under A97.1(2) carry the highest level of punishment, and are the only ones that are prosecutable either by indictment or summary conviction. The only violations falling into this category are violations of A89.1 (presenting an improperly documented person).

Violations prosecuted under A97.1(1) carry the second-highest levels of punishment. The following offences fall under this provision: violations of A88(1)(a), A88(1)(b), A89(1)(a), A89(1)(b), A89(1)(c), A90(2), A92(5.1), and ss. 54.1(a) through 54.1(l) of the *Immigration Regulations*.

Violations prosecuted under A97.1(3) carry the lowest level of punishment. The offences punished under this provision are prescribed in s. 54.2 of the *Immigration Regulations*.

You should consider laying charges only in flagrant cases of abuse or in cases of recurrent negligence. If guidance is required, you may consult the Manager, Transportation Division, Port of Entry Control, National Headquarters.

A further level of general punishment is available under A98, which you can use with respect to any person who knowingly contravenes any aspect of the Act or Regulations, or any order or direction lawfully made or given for which no other punishment is provided in the Act.

See chapter PE 1 for further information on collecting evidence and laying charges.

8.4 Liability of officers of corporations

If the offence is committed by a corporation, any officer, director, or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence can be liable, on conviction, to the punishment, whether or not the corporation is prosecuted or convicted (A99(1)).

8.5 Offences by employees or agents

It is sufficient proof of the offence for you to establish that the offence was committed by an employee or agent of the accused, whether or not the employee or agent is identified or prosecuted for the offence, unless the accused establishes that the offence was committed without his or her knowledge or consent, and that the accused exercised all due diligence to prevent its commission (A99(2)).

8.6 Offences outside Canada

Any offence committed outside Canada that would be punished if committed in Canada can be tried and punished in Canada (A100). An offence may be tried and determined anywhere in Canada (A101(2)).

8.7 Venue

If the offence is committed in Canada, it can be tried and determined at the place where the offence was committed, or at the place where the accused is or has an office or place of business at the time the proceedings are instituted (A101(1)).

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APPENDIX A

SAMPLE OF IMM 459 (02-93) B - RECORD OF TRANSPORTATION COMPANY LIABILITY



Employment and
Immigration Canada

Emploi et
Immigration Canada

RECORD OF TRANSPORTATION COMPANY LIABILITY
REGISTRE DES FRAIS À LA CHARGE DU TRANSPORTEUR

A separate form must be completed for each case.

CIC's must use this form when removal or medical costs are incurred for which the carrier is liable or when cash security has been deposited pursuant to A92(2). When completed, forward the original to the Chief, Revenue Accounting, NHO.

Un formulaire distinct doit être rempli dans chaque cas.

Les CIC doivent utiliser le présent formulaire lorsque sont engagés des frais de renvoi ou des frais médicaux mis à la charge du transporteur ou qu'un cautionnement en espèces a été versé conformément au L92(2). Après avoir rempli le formulaire, il faut envoyer l'original au chef, Comptabilité du revenu, AC.

CIC File No. - N° de dossier du CIC

Cash Deposit \$ - Dépôt en espèces \$

Serial No. (From IMM 410)
Numéro de série (de l'IMM 410)

Name and Address of Carrier - Nom et adresse du transporteur

Surname - Nom de famille

Given Names - Prénoms

Date of Birth
Date de naissance

Date _____

Particulars of Expenses
État des dépensesAmount
Montant

Verified By
Vérifié par

TOTAL EXPENSES
TOTAL DES DÉPENSES

Name of Immigration Officer
Nom de l'agent d'immigration

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APPENDIX B

SAMPLE OF IMM 5244 (05-93) B - CARRIER NOTIFICATION OF A VIOLATION OF SECTION 89.1



Employment and
Immigration Canada

Emploi et
Immigration Canada

CARRIER NOTIFICATION OF VIOLATION OF SECTION 89.1 (Bringing an improperly documented person to Canada)
INFRACTION À L'ARTICLE 89.1 - AVIS AU TRANSPORTEUR (Amener une personne non munie des documents requis)

		File Number / N° de dossier
To the Representatives of / Au représentant de		
Name of person concerned / Nom de la personne concernée		Citizen of / Citoyenneté
Alias (es) / Autres noms utilisés		Sex / Sexe
Flight No. / N° de vol	Route No. / N° d'itinéraire	Vessel name / Nom du navire
Date of Arrival / Date d'arrivée	Last Point of Embarkation / Dernier point d'embarquement	At / À

TYPE OF VIOLATION (NOTE: VISA = CVV, IMM 1000 or GENERIC VISA) / GENRE D'INFRACTION (REMARQUE: VISA = VCV, IMM 1000 ou VISA GÉNÉRIQUE)

- | | |
|---|--|
| <input type="checkbox"/> No travel documents
Pas de titre de voyage | <input type="checkbox"/> Fraudulent or altered Visa
Visa faux ou falsifié |
| <input type="checkbox"/> No Visa
Pas de visa | <input type="checkbox"/> Fraudulent or altered Minister's Permit
Permis ministériel faux ou falsifié |
| <input type="checkbox"/> Expired Visa
Visa expiré | <input type="checkbox"/> Fraudulent or altered passport
Passeport faux ou falsifié |
| <input type="checkbox"/> Expired Minister's Permit
Permis ministériel expiré | <input type="checkbox"/> Fraudulent or altered U.S. Resident Alien card
Certificat américain d'inscription au registre des étrangers faux ou falsifié |
| <input type="checkbox"/> Expired passport
Passeport expiré | <input type="checkbox"/> Fraudulent or altered Seaman's Book
Livret de marin faux ou falsifié |
| <input type="checkbox"/> Borrowed Genuine Passport or Other Travel Document
Passeport authentique d'une autre personne | |

- ☐ It is likely that this violation will result in an Administration Fee
Il est probable que suite à cette infraction des frais administratifs soient imposés.

Remarks: Other information useful to the carrier
Observations: Autres renseignements utiles au transporteur

Transportation companies which convey persons to Canada in contravention of Section 89.1 of the Immigration Act may be required to pay an administration fee pursuant to paragraph 91.1 (1) of the Act. Notices of fee assessment are issued by the Director, Port of Entry Control, Immigration National Headquarters.

En vertu de l'alinéa 91.1 (1) de la Loi, des frais administratifs peuvent être imputés aux transporteurs qui amènent des personnes au Canada sans s'être acquittés de leur obligation visée à l'article 89.1 de la Loi sur l'immigration. Les avis d'imputation de tels frais sont délivrés par le directeur du Contrôle aux points d'entrée, administration centrale de l'immigration.

EO's Signature / Signature de l'examineur	Name in block letters / Nom en lettres d'imprimerie	Date
---	---	------

IMM 5244 (05-93) B

Canada

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APPENDIX C

SAMPLE OF IMM 5161 (04-93) B - RECOMMENDATION FOR ADMINISTRATION FEE

Employment and Immigration Canada		Emploi et Immigration Canada		PROTECTED WHEN COMPLETED - A PROTÉGÉ UNE FOIS REMPLI	
RECOMMENDATION FOR ADMINISTRATION FEE RECOMMANDATION POUR FRAIS ADMINISTRATIFS					
1 CIC	2 Port of entry / Point d'entrée	3 File No. / N° de dossier			
4 Surname / Nom de famille		5 Given name(s) / Prénom(s)			
6 Alias(es) used / Autres noms utilisés					
7 Country of citizenship / Pays de citoyenneté	8 Sex / Sexe <input type="checkbox"/> Male / Homme <input type="checkbox"/> Female / Femme	9 Date of birth / Date de naissance D / J / M / Y / A			
10 Carrier / Transporteur		11 Flight No. - Route No. - Vessel name / N° de vol - N° d'embarquement - Nom du navire			
12 Last point of embarkation / Dernier point d'embarquement		13 Date of arrival / Date d'arrivée D / J / M / Y / A			
14 Name and address of shipping agency or airline joint venture partner / Nom et adresse de l'agence maritime / du coentrepriseur					
15 <input type="checkbox"/> Stowaway / Passager clandestin <input type="checkbox"/> In transit / En transit <input type="checkbox"/> Disembarkation screening / Vérification au débarquement <input type="checkbox"/> Documents held by carrier / Documents retenus par le transporteur <input type="checkbox"/> Searched for concealed documents / Fouillé(e) pour des documents dissimulés <input type="checkbox"/> Eluded examination (27(2)(f)) / S'est dérobé(e) à l'interrogatoire (27(2)(f)) <input type="checkbox"/> Carried person in contravention of SOG2 order / Personne transportée contrairement à un ordre en vertu du SOG2					
TYPE OF VIOLATION (NOTE: VISA = CIVIL, IMM 1886 or 6285B/C VISA) / GENRE D'INFRACTION (REMARQUE: VISA = CIVIL, IMM 1886 ou VISA 6285B/C)					
<input type="checkbox"/> No travel documents / Pas de titre de voyage <input type="checkbox"/> No Visa / Pas de visa <input type="checkbox"/> Expired Visa / Visa expiré <input type="checkbox"/> Expired Minister's Permit / Permis ministériel expiré <input type="checkbox"/> Expired Passport / Passeport expiré <input type="checkbox"/> Borrowed Genuine Passport or Other Travel Document / Passeport authentique d'une autre personne <input type="checkbox"/> Good resemblance? / Bonne ressemblance? <input type="checkbox"/> Yes / Oui <input type="checkbox"/> No (explain) / Non (précisez) <input type="checkbox"/> Fraudulent or Altered Visa / Visa faux ou falsifié <input type="checkbox"/> Fraudulent or Altered Minister's Permit / Permis ministériel faux ou falsifié <input type="checkbox"/> Fraudulent or Altered Passport / Passeport faux ou falsifié <input type="checkbox"/> Fraudulent or Altered U.S. Resident Alien Card / Certificat américain d'inscription au registre des étrangers faux ou falsifié <input type="checkbox"/> Fraudulent or Altered Seaman's Book / Livre de marin faux ou falsifié <input type="checkbox"/> Could this fraudulent document have been detected by the transportation company? / Ce faux document aurait-il pu être détecté par le transporteur? <input type="checkbox"/> Yes / Oui <input type="checkbox"/> No (explain) / Non (précisez)					
17 Description of fraudulent documents or other remarks / Description des faux documents ou autres observations					
The transportation company named herein transported the above-named person to Canada, in respect of which an administration fee should be assessed pursuant to 591.1(1) of the Immigration Act. The above-named person has been directed to appear for an inquiry or for refugee determination. Le transporteur dont le nom figure sur le présent avis a amené la personne mentionnée ci-dessus au Canada. Il s'agit d'une infraction pour laquelle des frais administratifs devraient lui être imputés en application du paragraphe 591.1(1) de la Loi sur l'immigration. La personne ci-haut mentionnée a été convoquée pour se présenter à une enquête.					
EO's Signature / Signature de l'examineur		Name in block letters / Nom en lettres d'imprimerie		Date D / J / M / Y / A	
SIO's Signature / Signature de l'agent principal		Name in block letters / Nom en lettres d'imprimerie		Date D / J / M / Y / A	
IMM 5161 (04-93) B ORIGINAL / ORIGINAL - PROC 180 (WITHIN 48 HOURS, ATTACH CERTIFIED COPIES OF ALL PAGES OF TRAVEL DOCUMENTS PERTINENT TO THIS VIOLATION AND COPIES OF ANY OTHER SUPPORTING DOCUMENTS. COPIES DES TITRES DE VOYAGE VISÉES PAR L'INFRACTION AINSI QUE LES COPIES DE TOUTE AUTRE MEILLE DOCUMENTAIRE COPY / COPIER - CC FILE / POUR 4-7-X					

Canada

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APPENDIX D
SAMPLE OF IMM 5160 (09-91) B - DECLARATION (PASSENGER)

PROTECTED WHEN COMPLETED - A



Employment and Immigration Canada Emploi et Immigration Canada

CIC FILE NO.

DECLARATION

IN THE MATTER OF THE IMMIGRATION ACT, AND THE MATTER OF _____
(NAME OF DECLARANT)

PROVINCE OF _____ MUNICIPALITY OF _____
I, _____ OF _____
(FULL NAME IN BLOCK LETTERS) (COUNTRY)

SOLENNLY DECLARE THAT:

1. MY FULL AND REAL NAME IS _____
2. MY DATE OF BIRTH IS _____ 3. I AM A CITIZEN OF _____
4. MY LAST PERMANENT ADDRESS WAS: _____
STREET _____ CITY _____
COUNTRY _____ 5. ON _____ DATE _____ I TRAVELLED TO
CANADA VIA _____
(NAME OF TRANSPORTATION COMPANY)
FROM _____
(FLIGHT / BUS / TRAIN / SHIP NO. OR NAME) (CITY / COUNTRY)
6. IN ORDER TO BOARD THE VEHICLE, I PRESENTED TO THE TRANSPORTATION COMPANY REPRESENTATIVE A _____
(TYPE OF DOCUMENT)
OF _____ IN THE NAME OF _____
(BUSINESS COUNTRY)
7. AND I FURTHER DECLARE:

8. AND I MAKE THIS DECLARATION CONSCIENTIOUSLY BELIEVING IT TO BE TRUE AND KNOWING THAT IT IS OF THE SAME FORCE AND EFFECT AS IF MADE UNDER OATH.

(SIGNATURE OF DECLARANT)

ADDRESS OR CONTACT IN CANADA: _____
STREET _____
CITY _____ PROVINCE _____ TELEPHONE _____

DECLARED BEFORE ME AT _____ IN THE PROVINCE OF _____
(CITY)
THIS _____ DAY OF _____ 19 _____

(SIGNATURE OF IMMIGRATION OFFICER)

(FULL NAME IN BLOCK LETTERS)

INTERPRETER'S DECLARATION

I, _____ DO SOLEMNLY DECLARE THAT I HAVE FAITHFULLY INTERPRETED IN THE

LANGUAGE THE CONTENT OF THIS DECLARATION TO _____
AND BELIEVE THAT HE/SHE UNDERSTOOD ITS MEANING. I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING IT TO BE TRUE AND
KNOWING THAT IT IS OF THE SAME FORCE AND EFFECT AS IF MADE UNDER OATH.

(SIGNATURE OF INTERPRETER)

(FULL NAME OF INTERPRETER IN BLOCK LETTERS)

(INTERPRETER'S ADDRESS)

THE INFORMATION YOU PROVIDE ON THIS DECLARATION IS COLLECTED UNDER THE AUTHORITY OF THE IMMIGRATION ACT FOR THE PURPOSE OF ADMINISTERING OBLIGATIONS OF THE
TRANSPORTATION COMPANIES, AND WILL BE STORED IN PERSONAL INFORMATION BANK NUMBER EICP-PV-235. PERSONAL INFORMATION THAT YOU PROVIDE IS PROTECTED UNDER THE
PROVISIONS OF THE PRIVACY ACT AND YOU HAVE A RIGHT OF ACCESS TO IT.

IMM 5160 (09-91) B

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION

DISTRIBUTION: ORIGINAL - CIC FILE
COPY - TRANSPORTATION VIOLATIONS UNIT, INQ

Canada

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APPENDIX E

**SAMPLE OF IMM 1445 (09-87) B - CONFIRMATION BY TRANSPORTATION COMPANY
REGARDING PASSENGER(S) CARRIED**

 **Employment and Immigration Canada** **Emploi et Immigration Canada** **CONFIRMATION BY TRANSPORTATION COMPANY REGARDING PASSENGER(S) CARRIED**
CONFIRMATION PAR LE TRANSPORTEUR AU SUJET DES PASSAGERS TRANSPORTÉS

COMPANY / TRANSPORTEUR	DATE OF ARRIVAL / DATE D'ARRIVÉE D / J M A	FLIGHT / ROUTE NO. / VOL. / ROUTE N°
------------------------	---	--------------------------------------

[illegible]

I confirm that the above - noted passenger (s)
arrived onboard the above vehicle.

Je confirme que les passagers susnommés sont arrivés à bord du véhicule indiqué ci-dessus.

TRANSPORTATION COMPANY REPRESENTATIVE
REPRÉSENTANT DU TRANSPORTEUR

IMMIGRATION OFFICER
AGENT D'IMMIGRATION

RATE

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
 FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

1MM 1445 (8 87)

Canada

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APPENDIX F

SAMPLE OF IMM 5248 (02-93) B - NOTIFICATION OF CONTRAVENTION
OF THE IMMIGRATION ACT OR REGULATIONS BY A TRANSPORTATION COMPANY



Employment and
Immigration Canada

Emploi et
Immigration Canada

NOTIFICATION OF CONTRAVENTION OF THE IMMIGRATION ACT OR REGULATIONS BY A
TRANSPORTATION COMPANY

AVIS D'INFRACTION À LA LOI OU AU RÈGLEMENT SUR L'IMMIGRATION PAR UN TRANSPORTEUR

(Transportation Company or Master / Transporteur)

contravened the Section of the Immigration Act and/or the Regulations indicated below.
a enfreint l'article de la Loi sur l'immigration ou du Règlement sur l'immigration indiqué ci-dessous.

Immigration Act, Section / Loi sur l'immigration :			
<input type="checkbox"/> 88 (1)	<input type="checkbox"/> 90 (2)	<input type="checkbox"/> 89 (1)	<input type="checkbox"/> 92 (5.1)
Immigration Regulations / Règlement sur l'immigration :			
<input type="checkbox"/> 50 (2)	<input type="checkbox"/> 52 (a)	<input type="checkbox"/> 53 (3)	<input type="checkbox"/> 54 (1)(c)
<input type="checkbox"/> 50.1 (2)	<input type="checkbox"/> 52 (b)	<input type="checkbox"/> 53 (4)	<input type="checkbox"/> 54 (1)(d)
<input type="checkbox"/> 50.1 (3)	<input type="checkbox"/> 53 (1)	<input type="checkbox"/> 54 (1)(a)	<input type="checkbox"/> 54 (2)
<input type="checkbox"/> 51	<input type="checkbox"/> 53 (2)	<input type="checkbox"/> 54 (1)(b)	

Date of Offence / Date de l'infraction	Point of Entry / Point d'entrée
Flight No. / N° de vol	Route No. / Itinéraire
Vessel Name / Nom du navire	
Description of Contravention / Description de l'infraction	

Transportation companies, as defined in the Immigration Act, are required to comply with Canada's Immigration Law. In the event of prosecution of this offence, the penalties that could result from a guilty verdict are:

On summary conviction

For a first offence, a fine not exceeding CDN. \$10,000.00; or
For a subsequent offence, a fine not exceeding CDN. \$50,000.00 or imprisonment for a term not exceeding six months or both.

For failure to comply with requests to provide written reports pursuant to RS1, RS2(1)(a), RS4(1)(a) to (d) or RS4(2)

On summary conviction

For a first offence, a fine not exceeding CDN. \$5,000.00; or
For a subsequent offence, a fine not exceeding CDN. \$10,000.00 or imprisonment for a term not exceeding six months or both

Les transporteurs, au sens de la Loi sur l'immigration, doivent respecter la législation canadienne en matière d'immigration. S'il y a poursuite, le transporteur reconnu coupable d'une infraction est passible des peines suivantes :

Dans le cas d'une infraction à l'un quelconque des articles cités ci-dessus :

pour une première infraction, une amende maximale de 10 000 \$ CAN;
pour toute infraction subséquente, une amende maximale de 50 000 \$ CAN ou une peine d'emprisonnement d'au plus six mois, ou les deux.

À défaut de remettre un rapport par écrit en vertu du RS1, RS2(1)(a), RS4(1)(a) à d) ou RS4(2) (obligation de remettre un rapport écrit), punissable par mise en accusation.

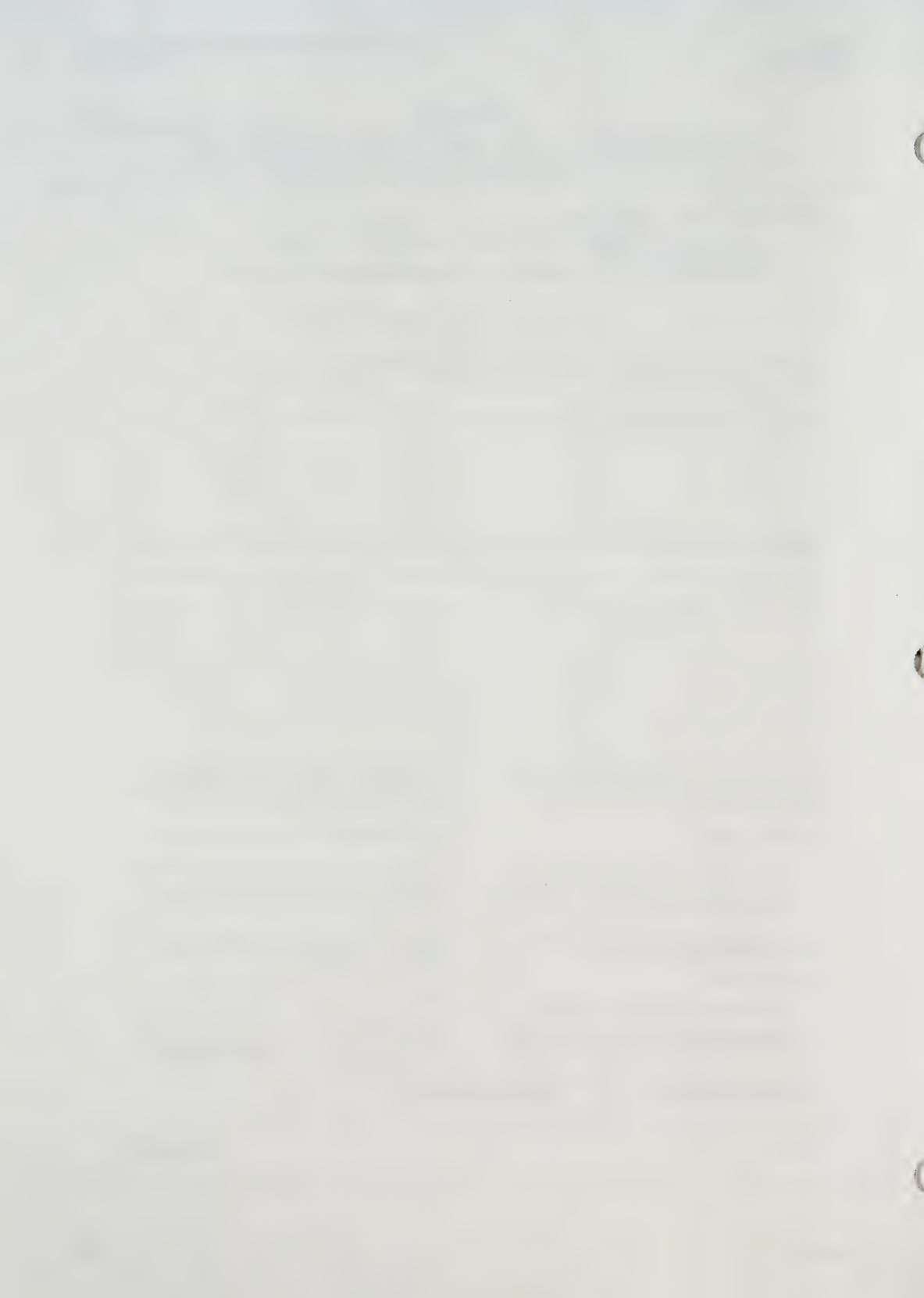
Dans le cas d'une infraction à l'un quelconque des articles cités ci-dessus :

pour une première infraction, une amende maximale de 5 000 \$ CAN;
pour toute infraction subséquente, une amende maximale de 10 000 \$ CAN ou une peine d'emprisonnement d'au plus six mois, ou les deux.

Immigration Officer's Signature Signature de l'agent de l'immigration	Name in Block Letters Nom en caractères d'imprimerie	Date
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IMM 5248 (02-93) B

Canada



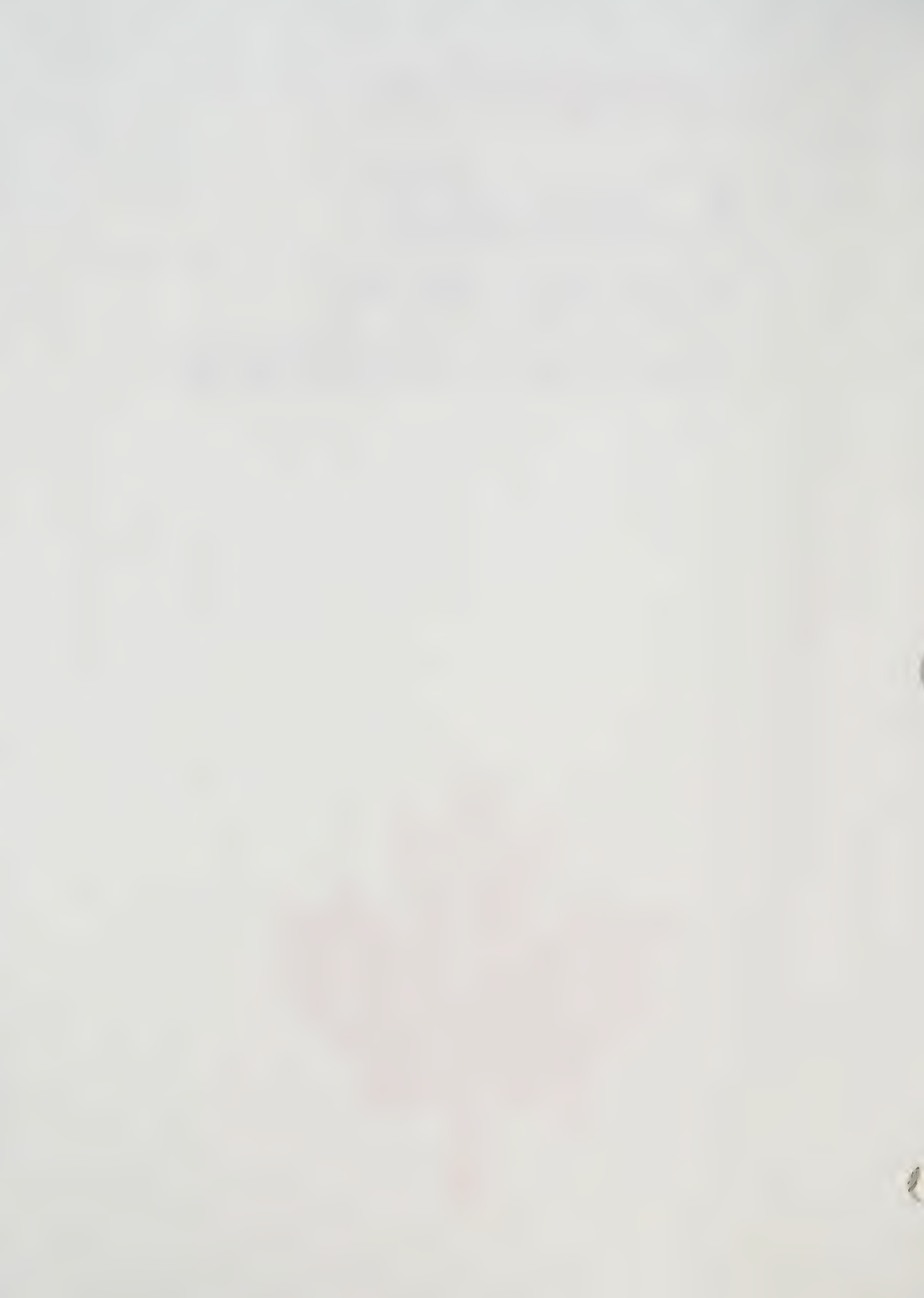
IMMIGRATION

Canada

Chapter PE 15

Verifying Departure







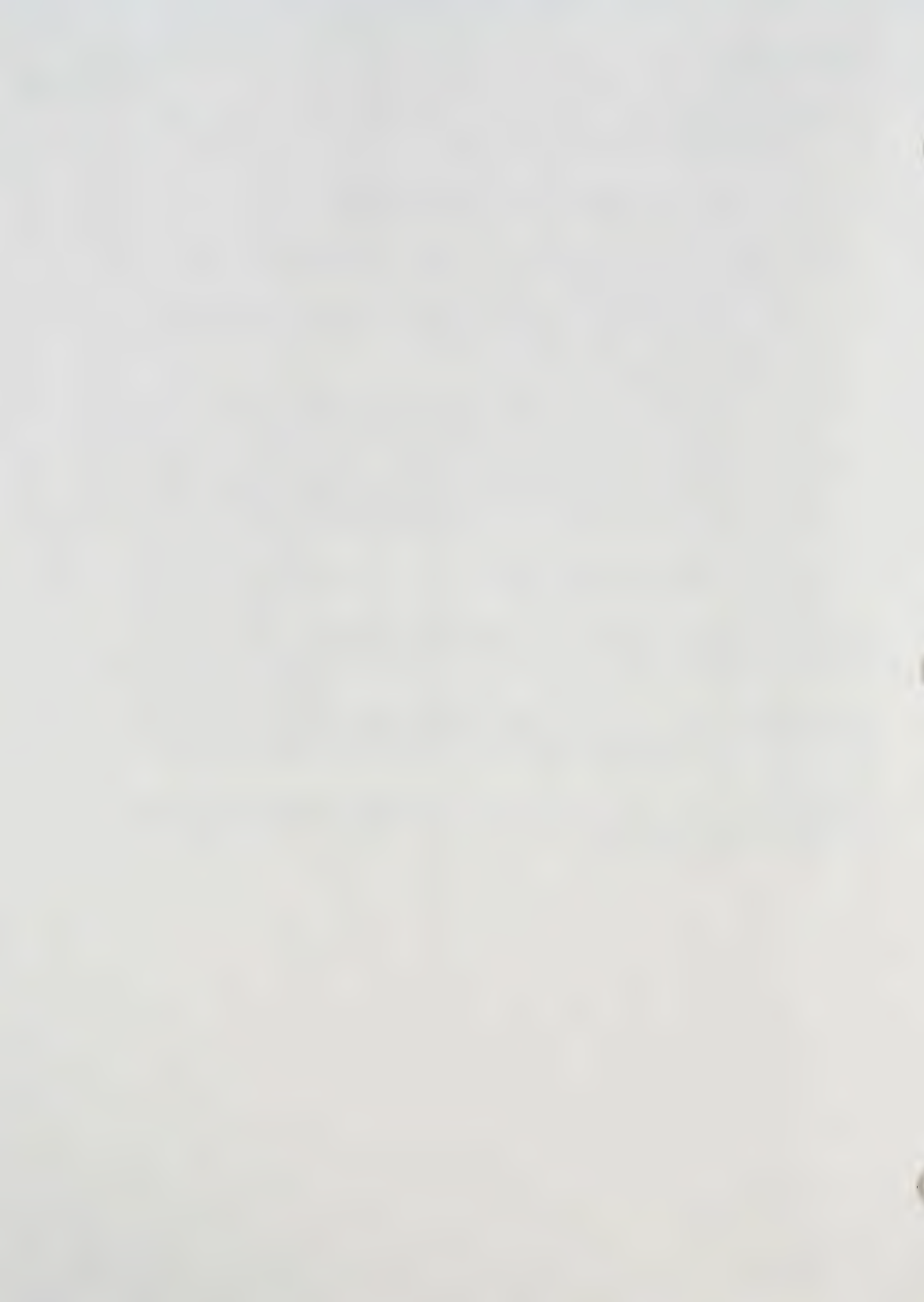
Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Verifying Departure

Abbreviations and Short Forms	
Act	<i>Immigration Act</i> , as amended
CIC	Canada Immigration Centre
CRDD	Convention Refugee Determination Division
CRU	Central Removal Unit
FOSS	Field Operations Support System
IO	Immigration Officer
PDRCC	Post-Determination Refugee Claimants in Canada
POE	Port of Entry and Port of Exit
SIO	Senior Immigration Officer
USINS	United States Immigration and Naturalization Service

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how an immigration officer at a port of exit verifies the departure from Canada of persons against whom departure orders have been made, and of persons against whom exclusion orders or deportation orders have been made and who have been allowed to leave Canada voluntarily.

1.2 Policy intent

Canadian immigration policy aims for verifying the departure of persons from Canada are:

- to ensure that persons required to leave Canada actually do so
- to maintain and protect public order and security in Canada
- to verify the removal of persons efficiently and expeditiously, and
- to ensure that all the legal rights accorded to persons being removed are observed, and that the removals are conducted effectively, sympathetically and equitably.

2. PERSONS SUBJECT TO DEPARTURE VERIFICATION

As an immigration officer (IO) at a port of entry or exit (POE), you are responsible for verifying the departure from Canada of:

- a) a person who is the subject of a departure order and who must appear or be brought before you, so that you can verify the person's departure from Canada and issue a certificate of departure [A32.01], and
- b) a person who is the subject of an exclusion order or a deportation order, who has been allowed to leave Canada voluntarily [A52(1)], and who must appear before you so that you can verify the person's departure from Canada and issue a confirmation of departure.

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, section 32.01 and subsection 52(1).

You issue a certificate of departure and a confirmation of departure on the same form: Confirmation/Certificate of Departure (IMM 56; see APPENDIX A).

3. VERIFYING DEPARTURE FOLLOWING DEPARTURE ORDERS

Under certain conditions an adjudicator may issue a departure order to a person instead of making a deportation order [A32(7), A32(2.1)]. In certain cases senior immigration officers (SIOs) are also authorized to make departure orders. A departure order serves as an alternative to deportation in the case of a person in Canada who is found liable to removal on minor grounds.

If the person fails to appear before you to have his or her departure verified and you do not issue a certificate of departure within the applicable period specified in s. 27 of the *Immigration Regulations*, the departure order is deemed to be a deportation order [A32.02(1)].

3.1 Departure order information kit

When an SIO, adjudicator, the Convention Refugee Determination Division (CRDD) or Case Management Branch at National Headquarters notifies the person concerned that a departure order is effective, an IO will:

- request that the person provide eight passport-size photographs
- affix one copy of the person's photograph to the client copy of the certificate of departure (IMM 56)
- stamp the photograph and stick transparent adhesive over it
- affix a copy of the person's photograph to the other four copies of the IMM 56
- place the remaining three copies of the person's photograph in the file, and
- give the person a departure order kit that includes instructions for the person about verifying departure, the consequences of not verifying departure, the consequences of a deemed deportation under A32.02(1), procedures for receiving a certificate of departure, and the addresses and hours of the POEs the person must use. The kit also explains that if a person intends to leave Canada from a land-border POE, the person must provide an address to which the certificate of departure can be mailed.

For instructions on issuing and distributing the IMM 56, see section 3.3 below.

3.2 Applicable period for issuing certificates of departure

The applicable period specified in s. 27 of the *Immigration Regulations* is affected by whether the person is notified in person or by mail that the departure order is effective. If the person is notified in person, the applicable period is 30 days after the day on which the order was issued or became effective, except for cases under ss. 27(1)(a), 27(1)(b) and 27(2) of the *Immigration Regulations*. For information on the exceptions, see section 3.2.1. below.

If notification that the order is effective is sent by mail, the applicable period is 37 days after the day on which the notification was mailed, which allows seven days for delivery of the notice [A2(4)].

3.2.1. Factors that affect the applicable period for issuing a certificate of departure

The time period allowed a person to present himself or herself to you for verification of departure and to receive a certificate of departure is affected by the following factors:

a) **stays, appeals and judicial review:**

if the departure order was stayed, the applicable period is 30 days after the day on which the stay is no longer in effect [*Immigration Regulations*, s. 27(1)(a)].

b) **moratorium:**

if the Minister has declared a moratorium on the removal of all nationals of the country of which the person is a national, the person has 30 days after the date the moratorium has been lifted to effect departure [*Immigration Regulations*, s. 27(1)(b)].

c) **other proceedings and orders:**

for the effect of other proceedings and orders, such as those in A50(1)(a) and A50(1)(b) [*Immigration Regulations*, s. 27(1)(a)], see APPENDIX B.

d) **post-determination refugee claimants in Canada (PDRCC) class review:**

every refugee claimant who has been determined not to be a Convention refugee by the CRDD is entitled to a review to determine if the claimant falls within the PDRCC class [*Immigration Regulations*, ss. 11.4, 27(2)(a) and 27(2)(b)].

- The review will take place three weeks after the claimant has been sent written notification of the negative CRDD determination. The three-week period allows for a seven-day mailing period for notification [A2(4)], plus 15 days for submissions for the PDRCC review [*Immigration Regulations*, s. 11.4(3)].
- If the refused refugee claimant applies for leave to begin an application for judicial review, the 15-day submission period begins after a negative Federal Court decision on the leave application, or after a refusal of the judicial review application if leave is granted [*Immigration Regulations*, s. 11.4(5)(a)]. The post-claim determination officer does not make a PDRCC decision until after the submission period has expired.
- A certificate of departure may be issued not later than 30 days after the day a person has been notified that he or she is not a member of the PDRCC class [*Immigration Regulations*, s. 27(2)(a)]. If the person is notified by mail of a negative PDRCC review, the applicable period is 37 days after the day on which the notification was mailed, which allows seven days for delivery of the notice [A2(4)].

e) **detention:**

detention in itself does not affect the time period for departure unless the person is in detention at the end of the applicable period. If the person is still in detention under the Act at the expiry of the 30-day period, the departure order cannot be deemed to be a deportation order [A32.02(3)].

3.2.2. Using FOSS to calculate applicable periods

You should use the Field Operations Support System (FOSS) to determine when the applicable period has expired.

FOSS includes information on the status of persons who have been issued departure orders and conditional departure orders. You are responsible for determining when the applicable period has expired by using the information available in FOSS. It is the responsibility of various inland officials to amend FOSS on a timely basis to indicate when departure orders become effective or otherwise reach a stage that activates the count-down period [*Immigration Regulations*, s. 27].

Except for a refugee claimant who has been determined by the CRDD not to be a Convention refugee, you should issue a certificate of departure to an applicant when you calculate from the information in FOSS that 30 days have not elapsed since:

- a) the day after the day on which a stay of removal granted to the person has lost its effect [*Immigration Regulations*, s. 27(1)(a)],
- b) the day after the end of a moratorium on removals of that client's nationality [*Immigration Regulations*, s. 27(1)(b)], or
- c) in any other case, the day after the departure order became effective [*Immigration Regulations*, s. 27(1)(c)].

You should issue a certificate of departure to a refugee claimant who has been determined by the CRDD not to be a Convention refugee when you calculate from the information in FOSS that 30 days have not elapsed since:

- a) the day after the person was notified that he or she is not a member of the PDRCC class [*Immigration Regulations*, s. 27(2)(a)], or
- b) the day after the person was notified that he or she was not to be granted landing [*Immigration Regulations*, s. 27(2)(b)].

Note: When decisions are mailed, add seven days to the calculations in this section 3.2.2 to allow for delivery of the notice [A2(4)].

3.3 Verifying compliance with departure orders

Only one condition must be met before compliance with a departure order occurs: within the applicable time period the person concerned must appear or be brought before you, so that you can verify the person's departure from Canada by:

- a) verifying the departure documents, and
- b) completing the IMM 56, which serves as a certificate of departure.

You should process a request for a certificate of departure positively, unless you determine that the applicable period has expired. If you cannot confirm from FOSS that the applicable period has expired, you should give the person the benefit of the doubt and issue a certificate.

When the person appears before you, you should:

- a) review the removal documents
- b) complete part C of the IMM 56 to confirm that the person has physically left Canada
- c) if a Central Removals Unit (CRU) has been involved with the removal, give the CRU's appropriate responsibility code in the CRU involved section of the IMM 56

- d) complete the *Confirmation of Departure* screen in FOSS as follows:
 - the *Status Entry* field
 - the *Originating CIC* field, giving the responsibility centre code of the Canada Immigration Centre (CIC) that originated the removal action, and
 - the *CRU* field, if a CRU has been involved with the removal, giving the CRU's appropriate responsibility code
- e) send the verification to the responsible CRU or originating CIC, as applicable, and distribute the other copies as indicated by the instructions at the bottom of the form.

3.4 Issuing certificates of departure at airports

You should issue a certificate of departure to a person departing from an airport just before the person boards the aircraft. The procedure is similar to that currently followed at an airport when you verify the departure of a person under removal order. You must update FOSS immediately.

3.4.1. Persons departing to the U.S. from airports with pre-clearance facilities

If a person is departing to the U.S. from an airport with pre-clearance facilities, it is preferable that you issue the certificate of departure after U.S. officials have pre-screened and accepted the person. This may not be possible because of the physical lay-out of some POEs, but the department strongly recommends this approach where facilities permit. If it is necessary to issue the certificate before the person is pre-screened, POEs should make arrangements locally with the United States Immigration and Naturalization Service (USINS) to notify a Canadian IO if the person is refused entry or voluntarily leaves the inspection area.

When you are unable to liaise with USINS pre-clearance personnel and you have reason to believe that a person will not be granted entry to the U.S. (for example, if the person does not have a visa when one is required), you should not issue a certificate of departure. Instead, follow the procedures in section 3.5 below for sending the certificate by mail or facsimile.

3.4.2. Persons departing to the U.S. from airports without pre-clearance facilities

If a person is departing to the U.S. from an airport without pre-clearance facilities, you should normally issue a certificate of departure before the person boards the aircraft. If you have good reason to believe that a person will not be granted entry to the U.S. (for example, if the person does not have a visa when one is required), you should not issue a certificate of departure. Instead, follow the procedures in section 3.5 below for sending the certificate by mail or facsimile.

3.5 Issuing certificates of departure at land-border POEs

If you are an IO at a land-border POE, you must issue a certificate of departure after the person has gained admission to the U.S. Send the certificate to the person by mail, or (if the client requests) by facsimile.

3.6 Persons refused entry into the U.S. at land-border POEs

If the client requests that you send him or her a copy of the certificate of departure by facsimile, you should accommodate the request where possible. Because the person has requested that a copy be sent by facsimile and has provided a facsimile number, you are complying with privacy standards.

One exception exists: you may give a citizen or permanent resident of the U.S. a certificate before the person leaves the Canadian POE.

You must require a person leaving from a land-border POE (other than a citizen or permanent resident of the U.S.) to provide an address or the facsimile number to which the certificate can be sent by mail or facsimile. Counsel the person to proceed to the U.S. port and seek entry. Advise the person that if he or she does not return to the Canadian POE within a reasonable time, you will assume that the person successfully gained admission to the U.S. and that you will send a copy of the certificate by mail or facsimile to the address or number provided. Where operationally feasible and local conditions permit, you may wish to liaise with your USINS counterpart to confirm departure.

If a person claims not to have an address, hold the certificate at the POE until the client contacts the POE with an address. If the client does not contact the POE within two weeks, you should mail the original of the IMM 56 to the office responsible for the client's main file. If you sent the person a copy of the document by facsimile but the person did not provide a mailing address for the original, you should return the original to the CIC holding the main file.

3.7 Persons refused entry by another country after having been issued a certificate of departure

If a person returns to the Canadian border after having been refused entry into the U.S. by USINS officials at a land POE, under A12(2) you must examine the person and allow him or her to come into Canada under A14(1)(c). Follow the procedures outlined in section 3.7 below.

If a person who has been issued a certificate of departure returns to Canada after having been refused entry by another country, you must examine the person under A12(2). You must allow the person to come into Canada under A14(1)(c), but you do not give status to the person. Because the person has been issued a certificate of departure, the departure order can no longer convert to a deportation order.

The departure order remains in force and can be executed like any other removal order. Under A54 an order is deemed not to have been executed where the person has not been granted lawful permission to be in any other country.

When the person returns to the POE, you should interview the person to determine the likelihood of the person's leaving Canada within the time remaining in the applicable period. If you believe that the person will continue to make every effort to leave Canada within the time remaining in the applicable period, you should allow the person to proceed into Canada. You should first obtain information that would be useful to investigators, such as the person's Canadian address and the addresses of

relatives and friends in Canada. You should remind the person of the importance of leaving Canada within the time remaining in the applicable period. You should counsel the person that if, for some reason, he or she is unable to leave by that time, the person must report to immigration authorities. You should also counsel the person that under A103(2) he or she is arrestable for removal if he or she fails to leave Canada within the applicable period. Amend FOSS to reflect the action you took: for example, make an *NCB* (non-computer-based) entry indicating that the person has returned to Canada, and give other information concerning the person's travel plans.

Even though the applicable period has not expired, if you have reasonable grounds to believe that the person poses a danger to the public or is unlikely to appear for removal from Canada you may, without the issue of a warrant, arrest and detain or arrest and make an order to detain the person [A103(2)(b)]. If you arrest and detain the person, you must complete a Notice of Arrest under Section 103 of the *Immigration Act* (form IMM 1285; see APPENDIX C) and refer the case to an SIO.

If you believe that the person will leave Canada within the time remaining in the applicable period, but you are of the opinion that it would be appropriate to impose terms and conditions on the person to encourage compliance with the Act, including the payment of a security deposit or the posting of a performance bond, you must refer the person to an SIO with your recommendation.

Under A103(3.1)(c), an SIO may impose terms and conditions as the SIO deems appropriate where a departure order has been made against the person. In this situation, an SIO may also detain persons who are likely to pose a danger to the public or who are unlikely to appear for removal [A103(3.1)(b)].

3.8 Persons refused entry by another country after the applicable period expires

If a person departs Canada after the applicable period and is not granted lawful permission to be in any other country, under A54(1) the person is not considered to have been deported, although the departure order has in fact changed to a deportation order [A32.02(1); *Immigration Regulations*, s. 27(1)].

Under A12(2), if a person departs Canada and afterwards seeks to return to Canada, whether or not he or she was granted lawful permission to be in any other country, the person is deemed to be seeking to come into Canada.

An IO may under A14(1)(c) allow the person to come into Canada but not report the person under A27(2)(h) because the person is not considered to be removed.

The IO may detain the person for removal if he or she has reasonable grounds to believe that the person will not appear for removal [A103(2)(b)], in that the person failed to effect his or her own removal under the original departure order that has now been deemed a deportation order.

3.9 Stays of removal

The execution of removal orders must be stayed in certain circumstances [A49, A50]. A person continues to qualify for a certificate of departure for 30 days after the day on which a stay has lost its effect [*Immigration Regulations*, s. 27(1)(a)].

The department anticipates that the majority of stays will be reflected in FOSS. Because stays can sometimes arise from obscure procedures (for example, when a court or review body requires a person to remain in Canada), there may be a few cases where the fact of a stay will not be displayed in FOSS.

The following four scenarios suggest appropriate responses to situations where action resulting in stays has allegedly been initiated. For each scenario, assume that a person has appeared at a POE requesting a certificate of departure. The person claims to have initiated appeal or court action against a departure order, or otherwise has a stay in place that allowed him to remain in Canada:

a) **FOSS situation:**

FOSS indicates that litigation which would result in a stay of removal has been initiated. There is no information in FOSS on whether the litigation that caused the stay has been finalized.

Your response:

issue the certificate of departure to the person in the normal manner, even though considerable time may have passed since the initiation of the litigation.

b) **FOSS situation:**

FOSS does not contain an entry indicating that an appeal or stay has been initiated. The person presents documentation to support the claimed action.

Your response:

review the documentation presented. The person should have appropriate evidence to support the claimed litigation: for example, the appropriate seal and stamp from the Immigration Appeal Division or court, or other acceptable confirmation. Give the client the benefit of the doubt and issue a certificate of departure in the normal manner.

Despite the documentation presented, if you have good reason to believe that an appeal or stay is not in place or the applicable period has expired, you may follow the review procedure outlined in the next scenario below.

c) **FOSS situation:**

FOSS does not contain an entry indicating that a stay of removal was ever in place. The person has no documentation to support the alleged stay, but insists that litigation resulting in a stay took place. The person convinces you that this is plausible based on the specific information provided.

Your response:

ask the person for his or her address in a foreign country. Obtain information from the person about the alleged litigation and resultant stay, where and when the litigation took place, the name of the person's lawyer, and so forth.

Advise the person that you will follow up the information to see if evidence of the stay can be found, and that if you find him or her to qualify for a certificate of departure, you will mail it to the person.

Then complete a *draft* Confirmation/Certificate of Departure (IMM 56) on FOSS. Ensure that you obtain all the necessary information, such as an address. Do not give the client a copy of the draft certificate.

Advise the responsible inland office holding the person's file of the situation, and ask them to follow up by reviewing the information you provided on FOSS. If the person is found to qualify for a certificate of departure, the inland office should issue and mail out the certificate.

If no evidence of the alleged stay is found, or if the person's date of departure was determined to have been 30 days after the date on which a stay of removal granted to the person has lost its effect under s. 27(1)(a) of the *Immigration Regulations*, you should issue a confirmation of departure and mail it to the person. You must write a letter to accompany the confirmation of departure, informing the person that he or she is deemed deported and advising the person that he or she cannot return to Canada without the consent of the Minister.

The person may seek entry before the CIC completes processing the certificate, and may provide documentary evidence attesting to the alleged stay. If so, you should issue a certificate of departure, and you may grant entry. You may issue a certificate of departure even after the applicable period expires, since the client contacted the POE at the time of departure requesting a certificate. If the person is unable to satisfy you that he or she qualifies for a certificate of departure, you should counsel the person to withdraw until the CIC makes a decision. If the person insists on coming forward, you should deem the person to have been deported, and process him or her accordingly.

d) FOSS situation:

FOSS does not contain an entry indicating that a stay of removal was ever in place. The client indicates that he or she did not depart earlier because he or she believed that legal or court action had been initiated which allowed him or her to remain in Canada. The person has no documentation to support this claim, nor can the person provide specific information that could be used to substantiate the allegation.

Your response:

issue a confirmation of departure. Advise the person that he or she has become the subject of a deemed deportation order, and that he or she will require the consent of the Minister to return to Canada. If the person or counsel later substantiates that a stay had been in place and that the application for the certificate of departure was made within the applicable period, you should cancel the confirmation of departure and issue a certificate of departure.

4. VERIFYING VOLUNTARY REMOVALS

The term "voluntary removal" is restricted to exclusion order and deportation order cases. You should not use it in the context of a departure order. For removals to the U.S., voluntary removal is called "voluntary departure" under part X of the *Reciprocal Arrangement between the Canada Employment and Immigration Commission and the United States Immigration and Naturalization Service, Department of Justice for the Exchange of Deportees between the United States of America and Canada*.

A person can only leave Canada and select the country of destination with the authorization from the Minister that is delegated to an expulsion officer. A person who leaves and does not comply with A52 cannot be said to have carried out the removal order [*Bhawan v. Minister of Employment and Immigration*, FCTD, Doc. No. T-1239-87, June 22, 1987; *Mercier v. Minister of Employment and Immigration*, FCTD, Doc. No. T-1512-85, November 17, 1986].

Voluntary removal does not negate the effect of the removal order. Failure to meet the removal date makes the person concerned liable to arrest under A103.

- a) When a person under an exclusion order or a deportation order has been granted the privilege of leaving voluntarily, an IO will:
 - counsel the person concerned to settle his or her personal affairs, and to make transportation arrangements to leave within a reasonable time
 - give the person an information kit that includes a copy of the exclusion order or deportation order, a confirmation of departure (form IMM 56), and instructions informing the person to report to an IO at a port of exit to have the removal verified
 - affix the person's photograph to each copy of the IMM 56
 - stamp the photograph and stick transparent adhesive over it
 - affix another copy of the person's photograph to the file copy of the order, and
 - place any remaining copies of the person's photograph on the file.
- b) When the person appears before you, you should:
 - review the removal documents
 - complete part C of the IMM 56 to confirm that the person has physically left Canada
 - if a CRU has been involved with the removal, give the CRU's appropriate responsibility code in the *CRU involved* section of the IMM 56
 - complete the *Confirmation of Departure* screen in FOSS as follows:
 - the *Status Entry* field
 - the *Originating CIC* field, giving the responsibility centre code of the CIC that originated the removal action, and
 - the *CRU* field, if a CRU has been involved with the removal, giving the CRU's appropriate responsibility code
 - send the verification to the responsible CRU or originating CIC, as applicable, and distribute the other copies as indicated by the instructions at the bottom of the form.

APPENDIX A

SAMPLE OF IMM 56 (12-92) B - CONFIRMATION/CERTIFICATE OF DEPARTURE

Employment and Immigration Canada / Emploi et Immigration Canada		PROTECTED WHEN COMPLETED / PROTÉGÉ UNE FOIS REMPLI - B	
CONFIRMATION/CERTIFICATE OF DEPARTURE CONFIRMATION/ATTESTATION DE DÉPART		V 070 760 771	
HEADQUARTERS: USE ONLY - RESERVE À L'ADMINISTRATION CENTRALE		CASE SERIAL NO. - N° DE CAS INITIAL	
5 6		CLIENT ID. - ID DU CLIENT	
NOTE TO BE COMPLETED FOR EACH PERSON DIRECTED TO LEAVE CANADA UNDER REMOVAL ORDER. À REMPLIR POUR CHAQUE PERSONNE ENJOINTÉ DE QUITTER LE CANADA EN VERTU D'UNE MESURE DE RENVOI. SEE BACK OF COPIES 1, 2 AND 3 FOR PRIVACY STATEMENT. VOIR AU VERSO DES COPIES 1, 2 ET 3 L'ÉNONCÉ SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS.		OFFICE FILE NO. - N° DE RÉFÉRENCE DU BUREAU	
A - PARTICULARS OF PERSON CONCERNED - RENSEIGNEMENTS SUR LA PERSONNE CONCERNÉE			
SURNAME - NOM			
GIVEN NAMES - PRÉNOMS			
DATE OF BIRTH / DATE DE NAISSANCE			
TYPE OF TRAVEL DOCUMENT / GENRE DE DOCUMENT DE VOYAGE			
NUMBER - NUMÉRO			
PLACE, COUNTRY, DATE OF ISSUE - LIEU, PAYS ET DATE DE DÉLIVRANCE			
B - OTHER INFORMATION - AUTRES RENSEIGNEMENTS			
CAUSE FOR REMOVAL - MOTIF DU RENVOI			
DETAINED FOR REMOVAL / DÉTENU POUR RENVOI			
LIABILITY - RESPONSABILITÉ			
TYPE OF ORDER / NOTICE - GENRE DE MESURE / AVIS			
1 DEPORTATION ORDER / MESURE D'EXCLUSION 2 EXCLUSION ORDER / MESURE D'EXCLUSION 3 DEPARTURE NOTICE / AVIS D'INTERDICTION DE SÉJOUR 4 DEPARTURE ORDER / MESURE D'INTERDICTION DE SÉJOUR 5 DEEMED DEPORTATION / RÉPUTÉ AVOIR ÉTÉ EXPLUSÉ			
REMOVAL UNDER ESCORT / RENVOI SOUS ESCORTE 1 YES / OUI 2 NO / NON			
APPLICABLE TO DEPARTURE ORDERS:			
1. THIS CERTIFICATE IS ISSUED IN ACCORDANCE WITH SECTION 32.01 OF THE IMMIGRATION ACT, FOLLOWING THE ISSUANCE OF A DEPARTURE ORDER AGAINST YOU.			
2. SECTION 32.02 OF THE ACT STATES THAT IF THIS CERTIFICATE IS NOT ISSUED WITHIN THE TIME SPECIFIED IN REGULATIONS (30 DAYS), "THE DEPARTURE ORDER IS DEEMED TO BE A DEPORTATION ORDER MADE AGAINST THE PERSON."			
3. SECTION 54(1) OF THE ACT STATES THAT "THE ORDER SHALL BE DEEMED NOT TO HAVE BEEN EXECUTED IF THE PERSON IS NOT GRANTED LAWFUL PERMISSION TO BE IN ANY OTHER COUNTRY."			
APPLICABLE DANS LE CAS D'UNE MESURE D'INTERDICTION DE SÉJOUR:			
1) LA PRÉSENTE ATTESTATION EST DÉLIVRÉE EN APPLICATION DE L'ARTICLE 32.01 DE LA LOI SUR L'IMMIGRATION PAR SUITE DE LA MESURE D'INTERDICTION DE SÉJOUR PRIS CONTRE VOUS.			
2) LE PARAGRAPHE 32.02 DE LA MÊME LOI DISPOSE QUE SI L'ATTESTATION DE DÉPART N'EST PAS DÉLIVRÉE DANS LA PÉRIODE RÉGLEMENTAIRE APPLICABLE "LA MESURE D'INTERDICTION DE SÉJOUR DONT EST FRAPPÉ L'INTERESSÉ DEVIENT UNE MESURE D'EXCLUSION".			
3) LE PARAGRAPHE 54(1) DE LA MÊME LOI DISPOSE QUE "LA MESURE DE RENVOI EST RÉPUTÉE N'AVOIR JAMAIS ÉTÉ EXÉCUTÉE SI LA PERSONNE QUI EN FAIT L'OBJET N'A PU OBTENIR LA PERMISSION DE SÉJOURNER DANS AUCUN AUTRE PAYS".			
DATE SIGNED - SIGNÉ LE			
SIGNATURE OF PERSON CONCERNED - SIGNATURE DE LA PERSONNE CONCERNÉE			
REMARKS - INCLUDE NAMES OF FAMILY MEMBERS ACCOMPANYING UNDER A 32(1) / OBSERVATIONS: INCLURE LE NOM DES MEMBRES DE LA FAMILLE QUI L'ACCOMPAGNENT EN VERTU DE L. 32(1)			
DATE SIGNED / DATE DE DÉPART			
OFFICE OF ISSUE - BUREAU DE DÉLIVRANCE			
SIGNATURE			
C - VERIFICATION OF DEPARTURE (Complete for all persons directed to leave Canada) - VERIFICATION DU DÉPART (À remplir pour toutes les personnes enjointes de quitter le Canada)			
THE ABOVE NAMED PERSON DEPARTED FROM - LA PERSONNE SUSNOMMÉE A QUITTÉ			
TO FINAL DESTINATION COUNTRY - AU LIEU DE DESTINATION FINAL (PAYS)			
CARRIER - TRANSPORT			
TIME - HEURE			
SIGNATURE OF IMMIGRATION OFFICER / SIGNATURE DE L'AGENT D'IMMIGRATION			
DATE OF DEPARTURE / DATE DU DÉPART			
CRU INVOLVED - CRU IMPLIQUÉ			
BOND DISPOSITION / DÉCISION QUANT AU CAUTIONNEMENT			
1 FORFEITED / CONFISCUE 2 REFUSED / REJÉTÉ			
BACKLOG LEG. DESP. LEG. ARRÊTÉ			
ENCLURES			
UTILITIES / LIBRÉS			

IMM 0056 (12-92) B

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

Canada

PERSON CONCERNED
PERSONNE CONCERNÉE 1

APPENDIX B

THE EFFECT OF OTHER PROCEEDINGS AND ORDERS ON REMOVAL

You should contact the regional Department of Justice representative to determine that no outstanding legal proceedings exist that would prohibit removal, if there is any doubt in your mind.

You must not execute a removal order if the execution would result in a violation of any other order made by any judicial body or officer in Canada [A50(1)(a)]. This applies to prerogative writs and other court orders directed against the department to prevent removal.

Other types of orders that do not directly order the department not to remove a person can also fall under A50(1)(a). These include a judicial interim release order, a promise to appear, a recognizance, an undertaking, a summons, a subpoena, a notice to appear, or a family court order that children not be removed from the court's jurisdiction. In other words, any order that requires the presence of the individual before the court at a designated time, date and place falls under A50(1)(a).

You may not remove an accused person who is subject to a judicial interim release order unless the Crown has stayed or withdrawn the charge or charges. The judicial interim release order need not include a phrase that the accused is ordered to stay within the jurisdiction. You will have to contact the provincial or federal Crown attorney in carriage of the file, and advise him or her of the necessity of staying or withdrawing the charge to facilitate removal. If the charge is fairly minor, the Crown will probably not have any problem with staying or withdrawing the charge.

Paragraph 50(1)(b) of the Act is reserved for situations where an individual does not have an order requiring his or her presence in a criminal proceeding on a certain day at a certain time: for example, where a witness has not yet been subpoenaed either by the defence or the Crown. The courts have held that A50(1)(b) is reserved for those instances where there is no outstanding order, declaring that the interests of the administration of criminal justice should come before the Minister's power to deport individuals [*Dennis Augustus Williams v. Minister of Employment and Immigration*, FCTD, Doc. No. T-1011-83, October 28, 1983].

When information comes to your attention that a person may be required in court proceedings, you must advise the police officer or Crown attorney in charge of the case that the department requires a letter requesting the person's presence in Canada. Forward a report and the letter to your regional Director General or Director, who will decide on behalf of the Minister whether to defer the removal [Instrument I-5].

APPENDIX C **SAMPLE OF IMM 1285 (07-93) B – NOTICE OF ARREST UNDER SECTION 103 OF THE** **IMMIGRATION ACT**

Employment and Immigration Canada Emploi et Immigration Canada		NOTICE OF ARREST UNDER SECTION 103 OF THE IMMIGRATION ACT AVIS D'ARRESTATION EN VERTU DE L'ARTICLE 103 DE LA LOI SUR L'IMMIGRATION	
HEADQUARTERS/USE ONLY - RESERVE À L'ADMINISTRATION CENTRALE <div style="border: 1px solid black; padding: 2px; display: inline-block;"> 5 2 </div>		P 010 660 016	
TO: SENIOR IMMIGRATION OFFICER - POUR L'AGENT PRINCIPAL FROM: IMMIGRATION OFFICER - ORIGINE L'AGENT D'IMMIGRATION		CASE SERIAL NO. - N° DE CAS INITIAL CLIENT ID - ID DU CLIENT	
IN ACCORDANCE WITH SUBSECTION 103(1) OF THE IMMIGRATION ACT, I MUST NOTIFY YOU THAT EN VERTU DU PARAGRAPHE 103(1) DE LA LOI SUR L'IMMIGRATION JE DOIS VOUS AVISER QUE			
SURNAME - NOM DE FAMILLE		GIVEN NAME(S) - PRÉNOMS	
NAME FLAG - INDICATEUR DU NOM		DATE OF BIRTH - DATE DE NAISSANCE	COUNTRY OF BIRTH - PAYS DE NAISSANCE
PLACE OF BIRTH - LIEU DE NAISSANCE		1 9	COUNTRY OF CITIZENSHIP - PAYS DE CITIZENSHIP
WAS ARRESTED ON _____ AT _____ AM/PM AND DETAINED UNDER SECTION 103 OF THE IMMIGRATION ACT A ÉTÉ ARRÊTÉ LE _____ À _____ H ET DÉTENU EN VERTU DE L'ARTICLE 103 DE LA LOI SUR L'IMMIGRATION			
<input type="checkbox"/> FOR INQUIRY BECAUSE THERE ARE REASONABLE GROUNDS TO BELIEVE HE/SHE IS A PERSON DESCRIBED IN PARAGRAPH 103(1) OF THE IMMIGRATION ACT AUX FINS D'ENQUÊTE PARCE QU'IL Y A DE BONNES RAISONS DE CROIRE QUE CETTE PERSONNE EST VISEE À L'ALINÉA 103(1) DE LA LOI SUR L'IMMIGRATION			
OR - OU <input type="checkbox"/> FOR EXAMINATION AUX FINS D'EXAMEN OR - OU <input type="checkbox"/> FOR REMOVAL AUX FINS DE RENVOI			
AND IN MY OPINION HE/SHE - ET, À MON AVIS, CETTE PERSONNE <input type="checkbox"/> POSES A DANGER TO THE PUBLIC CONSTITUE UNE MENACE POUR LE PUBLIC AND/OR - ET/OU <input type="checkbox"/> WOULD NOT APPEAR FOR INQUIRY, EXAMINATION OR REMOVAL NE SE PRÉSENTERA PAS À L'ENQUÊTE OU À L'EXAMEN, OU N'ESTIMÉRIERA PAS À L'ORDONNANCE DE RENVOI			
MY REASONS FOR FORMING THIS OPINION ARE: - VOICI MES RAISONS:			
TYPE OF CASE - GENRE DE CAS		OFFICE FILE NO. - N° DE RÉFÉRENCE DU BUREAU	
DATE SIGNED - SIGNÉ LE		OFFICE OF ISSUE - BUREAU DE DÉLIVRANCE	
D-J M Y-A		IMMIGRATION OFFICER - AGENT D'IMMIGRATION	
THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION			
SENIOR IMMIGRATION OFFICER AGENT PRINCIPAL 1		WITH SIGNATURE - AVEC MONOGRAMME 1- YES OUI 2- NO NON	
REASON FOR ARREST - motif d'arrestation 1- IMMIGRATION 2- 3- OTHER REASONS - AUTRES RAISONS		TYPE OF BOND - GENRE DE CAUTIONNEMENT 1- 2- 3- 4-	
TYPE OF TRAVEL DOCUMENT - GENRE DE DOCUMENT DE VOYAGE		DETENTION STATUS - DÉTENTION (SITUATION)	
DISPOSITION - DÉCISION		TYPE OF BOND - GENRE DE CAUTIONNEMENT	
1- 2- 3- 4-		5- 6- 7- 8-	
ORIGINAL DOCUMENT SERIAL NO. - N° DE SÉRIE DU DOCUMENT INITIAL		DATE OF ORIGINAL ENTRY - DATE D'ENTRÉE INITIALE	
ORIGINAL DOCUMENT SERIAL NO. - N° DE SÉRIE DU DOCUMENT INITIAL		DATE OF ORIGINAL ENTRY - DATE D'ENTRÉE INITIALE	
ORIGINAL DOCUMENT SERIAL NO. - N° DE SÉRIE DU DOCUMENT INITIAL		DATE OF ORIGINAL ENTRY - DATE D'ENTRÉE INITIALE	
THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION			

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change. From the first settlers to the present day, the nation has evolved through various stages of development. The early years were marked by exploration and settlement, followed by a period of rapid expansion and industrialization. The American Revolution and the Civil War were pivotal moments in the nation's history, shaping its identity and values.

The United States has a rich and diverse cultural heritage. The contributions of immigrants from various parts of the world have shaped the nation's identity. The American Dream, the belief that anyone can achieve success through hard work and determination, is a central theme in the nation's history. The struggle for civil rights and equality has been a continuous process, reflecting the nation's commitment to justice and freedom.

The United States has played a significant role in world history. Its economic power and military strength have shaped the global landscape. The nation's commitment to democracy and human rights has inspired other countries. The American Revolution and the Civil War were pivotal moments in the nation's history, shaping its identity and values.

The United States has a long and proud history. The nation's values of freedom, democracy, and equality have been the foundation of its success. The American Dream, the belief that anyone can achieve success through hard work and determination, is a central theme in the nation's history. The struggle for civil rights and equality has been a continuous process, reflecting the nation's commitment to justice and freedom.

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TEMPORARY FOREIGN WORKER GUIDELINES

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INSERT

CHAPTER FW 1 THROUGH 11
in its entirety.

(également disponible en français)

Please note:

This new FW manual is replacing :	
Chapter IS 15	(noted in manual)
Chapter IP 7	(noted in manual)
Chapter IP 16	(noted in manual)
Chapter OP 11	
Chapter OP 12	
Chapter PE 7	
Chapter PE 16	

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